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COMMONWEALTH OF KENTUCKY

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property within the taxing jurisdiction of the Commonwealth shall be taxable for state purposes only at the same rate as the intangible property of other taxpayers not performing public services, and operating property and nonoperating tangible property shall be subject to state and local taxes at the same rate as the tangible property of other taxpayers not performing public services.

- (3) The Department of Revenue~~[Cabinet]~~ shall have sole power to value and assess all of the property of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not the operating property, nonoperating tangible property, or nonoperating intangible property has heretofore been assessed by the department~~[cabinet]~~, and shall allocate the assessment as provided by KRS 136.170, and shall certify operating property liable to local taxation and nonoperating tangible property to the counties, cities, and taxing districts as provided in KRS 136.180. All of the property assessed by the department~~[cabinet]~~ pursuant to this section shall be assessed as of December 31 each year for the following year's taxes, and the lien therefor shall attach as of the assessment date. In the case of a taxpayer whose business is predominantly nonpublic service and the public service business in which he is engaged is merely incidental to his principal business, the department~~[cabinet]~~ shall in the exercise of its judgment and discretion determine, from evidence which it may have or obtain, what portion of the operating property is devoted to the public service business subject to assessment by the department~~[cabinet]~~ under this section and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities.

Section 302. KRS 136.130 is amended to read as follows:

- (1) Each corporation included in KRS 136.120(1) shall annually, between December 31, and April 30, following, make and deliver to the Department of Revenue~~[~~

1 ~~Cabinet~~ a report in such form as the department~~cabinet~~ may prescribe, showing
 2 such of the following facts as may be requested by the department~~cabinet~~: The
 3 name and principal place of business of the corporation; the kind of business
 4 engaged in; the amount of capital stock, preferred and common, and the number of
 5 shares of each; the amount of stock paid up; the par and fair cash value of the stock;
 6 the highest price at which the stock was sold at a bona fide sale within twelve (12)
 7 months next before December 31 of the year for which the report is required to be
 8 made; the amount of surplus funds and undivided profits; the total amount of
 9 indebtedness as principal; the cost and year acquired of all operating property
 10 owned, operated, or leased, including property under construction, property held for
 11 future use, and the depreciation attributable thereto as of December 31, the cost and
 12 year acquired of all nonoperating tangible property and the depreciation attributable
 13 thereto; the cost and market value as of December 31 of all intangible property; the
 14 value of all other assets; the operating and nonoperating revenues, the net utility
 15 operating income before and after depreciation and before and after income taxes,
 16 the net income from operations, the net income including income from investments,
 17 and income from all other sources for twelve (12) months next preceding December
 18 31 of the year for which the report is required; the amount and kind of operating
 19 property in this state, and where situated in each county, city, and taxing district,
 20 assessed or liable to assessment in this state, and the fair cash value thereof, the
 21 length and description of all the lines operated, owned, or leased in this state and in
 22 each county, city, and taxing district; and such other facts as the
 23 department~~cabinet~~ may require.

24 (2) The report shall cover the period of twelve (12) months ending December 31. The
 25 department~~cabinet~~ may change the date of the reports to conform to any change in
 26 date established by federal regulations.

27 (3) If any corporation is in the hands or under the control of a receiver or other person,

1 by order of a court, the receiver or other person shall make the reports required by
2 this section and by KRS 136.140.

3 (4) All public service corporations included in KRS 136.120 shall file with the report
4 required by subsection (1) of this section a copy of all reports to their stockholders
5 and a complete copy of their report to the Kentucky regulating authority for the year
6 ending December 31.

7 (5) The Department of Revenue~~[Cabinet]~~ may grant an extension of thirty (30) days to
8 file the public service property tax return when, in its judgment, good cause exists.
9 The department~~[cabinet]~~ shall keep a record of every extension and the taxpayer
10 shall attach a copy of the approved extension to his return when filed.

11 (6) A taxpayer may be granted a thirty (30) day extension for filing the public service
12 company property tax return if it requests the extension before the due date of the
13 return and includes with the extension request a report of any increases or decreases
14 in property of fifty thousand dollars (\$50,000) or more in any taxing district.

15 Section 303. KRS 136.132 is amended to read as follows:

16 (1) Each corporation included in KRS 136.120(1) shall annually, when filing the report
17 required by KRS 136.130, provide to the Department of Revenue~~[Cabinet]~~ a
18 listing of all motor vehicles and trailers operated, owned, or leased by it which are
19 subject to registration in Kentucky with the latest registration or certificate number
20 issued to such motor vehicle or trailer and the make, model and year of each
21 vehicle.

22 (2) The Department of Revenue~~[Cabinet]~~ shall, when valuing the property of
23 corporations or companies assessable by it, value the vehicles at no less than the
24 value used by the property valuation administrator.

25 (3) In certifying the assessment of property of public service companies subject to local
26 taxation, the department~~[cabinet]~~ shall separately certify the amount of the
27 assessment representing the valuation of motor vehicles and trailers or an

1 apportionment thereof.

2 Section 304. KRS 136.140 is amended to read as follows:

- 3 (1) If a public service corporation, foreign or domestic, operates and conducts its
4 business in other states as well as in this state, the report required by KRS 136.130
5 shall show the following additional facts: the cost and year acquired of the operating
6 property operated, owned, or leased, including property under construction, property
7 held for future use, and depreciation attributable thereto for the property in this state
8 as of December 31; and such other facts as the department~~[cabinet]~~ may require.
- 9 (2) All public service corporations included in KRS 136.120 shall file with the report
10 required by KRS 136.130 and this section a copy of all reports to their stockholders
11 and a complete copy of their report to the federal regulating agency if their
12 operations are interstate.

13 Section 305. KRS 136.150 is amended to read as follows:

14 If any corporation fails to report as required by KRS 136.130 and 136.140 on or before
15 April 30 of each year, or May 30 if the Department of Revenue~~[Cabinet]~~ has granted the
16 corporation an extension, the Department of Revenue~~[Cabinet]~~ shall ascertain the
17 required facts and values in such manner and by such means as it deems proper, at the
18 cost of the corporation failing to make the report.

19 Section 306. KRS 136.160 is amended to read as follows:

- 20 (1) The Department of Revenue~~[Cabinet]~~ shall determine the fair cash value of the
21 operating property of a domestic public service corporation as a unit. The fair cash
22 value of the operating property shall be equalized.
- 23 (2) The Department of Revenue~~[Cabinet]~~ shall determine the fair cash value of the
24 operating property of a foreign public service corporation or a domestic public
25 service corporation with property or routes in Kentucky and outside Kentucky as a
26 unit according to subsection (1). The fair cash value of the operating property
27 everywhere valued as a unit shall be apportioned to Kentucky based on the average

1 of the property factor and the business factor. The fair cash value of the operating
2 property in Kentucky shall be equalized.

3 (a) The property factor shall fairly reflect the amount of operating property
4 operated, owned, or leased in Kentucky compared to the total amount of
5 operating property operated, owned, or leased everywhere. An allocable
6 portion of the rolling stock, aircraft, and watercraft of a common carrier shall
7 be included in the operating property, operated, owned, or leased in Kentucky.
8 This factor may be a single factor or an average of several factors.

9 (b) The business factor shall fairly reflect the utilization of the operating property
10 operated, owned, or leased in Kentucky compared to the utilization of the
11 operating property operated, owned, or leased everywhere. This factor may be
12 a single factor or an average of several factors.

13 (3) The nonoperating tangible and nonoperating intangible property of public service
14 corporations whose operating property is valued according to either subsection (1)
15 or (2) shall be valued by the Department of Revenue~~[Cabinet]~~ in the same manner
16 and according to the same standards as if this property were valued by the property
17 valuation administrator in the county where the property has a taxable situs.

18 Section 307. KRS 136.170 is amended to read as follows:

19 The Department of Revenue~~[Cabinet]~~ shall allocate the assessed value of the operating
20 property in this state among the counties, cities, and other taxing districts. The location of
21 operating property and the proportion which the length of line or route operated in such
22 taxing district bears to the total length of lines or route operated in this state shall be
23 considered in this allocation and such other reasonable evidence of value as the
24 Department of Revenue~~[Cabinet]~~ may by regulations prescribe; provided, however, that
25 the assessed value of nonoperating tangible property shall be allocated to the county, city,
26 or other taxing district where the property is situated.

27 Section 308. KRS 136.180 is amended to read as follows:

- 1 (1) The Department of Revenue~~[- Cabinet]~~ shall, immediately after fixing the assessed
2 value of the operating property and other property of a public service corporation
3 for taxation, notify the corporation of the valuation and the amount of assessment
4 for state and local purposes. When the valuation has been finally determined, the
5 department~~[- cabinet]~~ shall immediately certify, unless otherwise specified, to the
6 county clerk of each county in which any of the operating property or nonoperating
7 tangible property assessment of the corporation is liable to local taxation, the
8 amount of property liable for county, city, or district tax.
- 9 (2) No appeal shall delay the collection or payment of taxes based upon the assessment
10 in controversy. The taxpayer shall pay all state, county, and district taxes due on the
11 valuation which the taxpayer claims as the true value as stated in the protest filed
12 under KRS 131.110. When the valuation is finally determined upon appeal, the
13 taxpayer shall be billed for any additional tax and interest at the tax interest rate as
14 defined in KRS 131.010(6), from the date the tax would have become due if no
15 appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.
- 16 (3) The Department of Revenue~~[- Cabinet]~~ shall compute annually a multiplier for use
17 in establishing the local tax rate for the operating property of railroads or railway
18 companies that operate solely within the Commonwealth. The applicable local tax
19 rates on the operating property shall be adjusted by the multiplier. The multiplier
20 shall be calculated by dividing the statewide locally taxable business tangible
21 personal property by the total statewide business tangible personal property.
- 22 (4) The Department of Revenue~~[- Cabinet]~~ shall annually calculate an aggregate local
23 rate for each local taxing district to be used in determining local taxes to be
24 collected for railroad carlines. The rate shall be the statewide tangible tax rate for
25 each type of local taxing district multiplied by a fraction, the numerator of which is
26 the commercial and industrial tangible property assessment subject to full local rates
27 and the denominator of which is the total commercial and industrial tangible

1 personal property assessment. Effective January 1, 1994, state and local taxes on
 2 railroad carline property shall become due forty-five (45) days from the date of
 3 notice and shall be collected directly by the Department of Revenue~~[Cabinet]~~. The
 4 local taxes collected by the Department of Revenue~~[Cabinet]~~ shall be distributed to
 5 each local taxing district levying a tax on railroad carlines based on the statewide
 6 average rate for each type of local taxing district. However, prior to distribution any
 7 fees owed to the Department of Revenue~~[Cabinet]~~ by any local taxing district
 8 under the provisions of subsection (4) of this section shall be deducted.

- 9 (5) The certification of valuation shall be filed by each county clerk in his office, and
 10 shall be certified by the county clerk to the proper collecting officer of the county,
 11 city, or taxing district for collection. Any district which has the value certified by
 12 the department~~[cabinet]~~ shall pay an annual fee to the department~~[cabinet]~~ which
 13 represents an allocation of department~~[cabinet]~~ operating and overhead expenses
 14 incurred in generating the valuations. This fee shall be determined by the
 15 department~~[cabinet]~~ and shall apply to valuations for tax periods beginning on or
 16 after December 31, 1981.

17 Section 309. KRS 136.181 is amended to read as follows:

18 Boats, tugs, barges, and other watercraft of any nonresident person, corporation,
 19 partnership, or any other business association whose route or system is partly within this
 20 state and partly within another state or states, shall be valued by the Department of
 21 Revenue~~[Cabinet]~~ for purposes of taxation and shall be assessed as of January 1 each
 22 year by the Department of Revenue~~[Cabinet]~~; and the department~~[cabinet]~~ shall fairly
 23 divide, allocate, and certify such assessments to each county, city, town, or other taxing
 24 district within this state, within or through which such route or system is operated, the
 25 division, allocation, and certification to be determined in the following manner:

- 26 (1) The proportion of the value of the property which the length of the lines or route
 27 operated in this state bears to the total length of lines or route operated in this state

1 and elsewhere, shall be considered in fixing the value of the property for taxation in
 2 this state. Any other reasonable evidence of value shall be considered in fixing the
 3 value, but such evidence must be prescribed by department~~[cabinet]~~ regulations;

4 (2) After ascertaining the portion of the system valuation of such property attributable
 5 to this state, the Department of Revenue~~[Cabinet]~~ shall allocate the value of the
 6 property among the counties, cities, towns, and other taxing districts. The
 7 proportion which the length of line or route operated in that jurisdiction or taxing
 8 district bears to the total length of lines or route operated in this state shall be
 9 considered in this allocation and such other reasonable evidence of value as the
 10 Department of Revenue~~[Cabinet]~~ may by regulations prescribe.

11 Section 310. KRS 136.182 is amended to read as follows:

12 On or before March 1, 1955, and each year thereafter, each nonresident person,
 13 corporation, partnership or other business association owning or operating boats, tugs,
 14 barges, or other watercraft whose route or system is partly within this state and partly
 15 within another state or states, shall on forms provided by the Department of Revenue~~[Cabinet]~~
 16 provide the Department of Revenue~~[Cabinet]~~ with a detailed description of all
 17 such property as well as a detailed description of the entire route or system traversed and
 18 such other information as the Department of Revenue~~[Cabinet]~~ may by regulation
 19 prescribe.

20 Section 311. KRS 136.183 is amended to read as follows:

21 The taxes on the above property shall become due at the same time and shall be subject to
 22 the same discount and penalties as provided by KRS 134.020, and shall be collected in
 23 the same manner as taxes on other tangible property; except that the state tax on such
 24 property shall be collected directly by the Department of Revenue~~[Cabinet]~~.

25 Section 312. KRS 136.184 is amended to read as follows:

26 Any taxpayer who has been assessed by the Department of Revenue~~[Cabinet]~~ in the
 27 manner outlined above shall have thirty (30) days from the date of the

1 department's~~[cabinet's]~~ notice of the tentative assessment in which to protest and ask for
2 a change thereof in the manner provided by KRS 131.110.

3 Section 313. KRS 136.186 is amended to read as follows:

4 When the Department of Revenue~~[Cabinet]~~ has made a final determination as to the
5 valuation of any such property owned or operated by such nonresident person,
6 corporation, partnership or other business association, it shall immediately certify the
7 amount thereof to the county clerk of each county in which any such property is liable for
8 taxation. The certification shall be filed by each county clerk in his office and the county
9 clerk shall certify to the proper collecting officer of the county, city, town, or taxing
10 district for collection.

11 Section 314. KRS 136.1873 is amended to read as follows:

12 (1) Notwithstanding the provisions of KRS 132.487, trucks, trailers, tractors,
13 semitrailers, and buses of any person, corporation, partnership, or any other
14 business association whose route or system is partly within this state and partly
15 within another state or states, shall be assessed by the Department of Revenue~~[Cabinet]~~
16 ~~Cabinet]~~ for purposes of taxation as of January 1 each year.

17 (2) The proportion of miles operated in this state compared to the total miles operated
18 everywhere shall be considered in fixing the value of the property for taxation.
19 Other reasonable evidence shall be considered in fixing the value. However, pick-up
20 and delivery vehicles operating from a terminal within this state or vehicles which
21 do not leave this state in the normal course of business shall not be valued on an
22 apportioned basis.

23 Section 315. KRS 136.1875 is amended to read as follows:

24 On or before April 15, 1991, and each year thereafter, each person, corporation,
25 partnership, or other business association owning or operating trucks, tractors, trailers,
26 semitrailers, and buses whose route or system is partly within this state and partly within
27 another state or states, shall on forms provided by the Department of Revenue~~[Cabinet]~~

1 provide the department~~[cabinet]~~ with a detailed description of all its vehicles operating
 2 within this state along with the necessary mileage data to be used in apportioning the
 3 value.

4 Section 316. KRS 136.1877 is amended to read as follows:

5 (1) The Department of Revenue~~[Cabinet]~~ shall immediately, after fixing the assessed
 6 value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of
 7 the valuation determined. Any taxpayer who has been assessed by the
 8 department~~[cabinet]~~ in the manner outlined in KRS 136.1873 shall have forty-five
 9 (45) days from the date of the department's~~[cabinet's]~~ notice of the tentative
 10 assessment to protest as provided by KRS 131.110.

11 (2) No appeal shall delay the collection or payment of taxes based upon the assessment
 12 in controversy. The taxpayer shall pay all state, county, and district taxes due on the
 13 valuation which the taxpayer claims as the true value as stated in the protest filed
 14 under KRS 131.110. When the valuation is finally determined upon appeal, the
 15 taxpayer shall be billed for any additional tax and interest at the tax interest rate as
 16 defined in KRS 131.010(6), from the date the tax would have become due if no
 17 appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

18 (3) The state and local taxes on the property are due forty-five (45) days from the date
 19 of notice and shall be collected directly by the Department of Revenue~~[Cabinet]~~.

20 (4) The Department of Revenue~~[Cabinet]~~ shall annually calculate an aggregate local
 21 rate to be used in determining the local taxes to be collected. The rate shall be the
 22 statewide average motor vehicle tax rate for each type of local taxing district
 23 multiplied by a fraction, the numerator of which is the commercial and industrial
 24 tangible personal property assessment subject to full local rates and the denominator
 25 of which is the total commercial and industrial tangible personal property
 26 assessment.

27 (5) The local taxes collected by the Department of Revenue~~[Cabinet]~~ shall be

distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue~~[Cabinet]~~ by any local taxing district under the provisions of KRS 136.180(5) shall be deducted.

Section 317. KRS 136.190 is amended to read as follows:

(1) The superintendent of schools in each district in which any individual, group of individuals or corporation, operates public utility or other franchise taxpaying property assessed under KRS 136.120 shall, on or before the first day of January, 1957, furnish to the county clerk of the county in which the district is situated, to each franchise taxpayer within the district, and to the Department of Revenue~~[Cabinet]~~, the boundary of his school district. The superintendent of schools in each district in which any franchise-paying corporation, individual, or group of individuals operates shall, on or before the first day of January, 1958, and each year thereafter, furnish to the county clerk, to each franchise taxpayer within the district, and to the Department of Revenue~~[Cabinet]~~, any changes made in the boundary of his school district during the immediately preceding twelve (12) months.

(2) The engineer of cities of the first class and the city clerk of cities of the second, third, fourth, fifth, and sixth classes shall notify the county clerk, each franchise taxpayer within the city, and the Department of Revenue~~[Cabinet]~~ of their boundaries in the same manner as required of the superintendent of schools in subsection (1).

(3) The responsible governing official or the chairman of the governing body of any taxing district other than the county, school district, or city shall notify the county clerk, each franchise taxpayer within the district, and the Department of Revenue~~[Cabinet]~~ of their boundaries in the same manner as required of the superintendent of schools in subsection (1).

Section 318. KRS 136.290 is amended to read as follows:

1 (1) Every federally or state chartered savings and loan association, savings bank, and
 2 other similar institutions operating solely in Kentucky shall, during January of each
 3 year, file with the Department of Revenue~~[Cabinet]~~ a report containing such
 4 information and in such form as the department~~[cabinet]~~ may require.

5 (2) The department~~[cabinet]~~ shall fix the total value, as of January 1 of each year, of
 6 the capital of each financial institution included in subsection (1) of this section.
 7 Capital shall include certificates of deposit, savings accounts, demand deposits,
 8 undivided profits, surplus, and general reserves, excepting the share of borrowing
 9 members where the amount borrowed equals or exceeds the amount paid in by those
 10 members. For Agricultural Credit Associations chartered by the Farm Credit
 11 Administration, capital shall be computed by deducting the book value of the
 12 association's investment in any other wholly owned institution chartered by the
 13 Farm Credit Administration that is either subject to the tax imposed by KRS
 14 136.300 or 136.310 or that is exempt from state taxation by federal law. The
 15 department~~[cabinet]~~ shall immediately notify each institution of the value so fixed.

16 Section 319. KRS 136.310 is amended to read as follows:

17 (1) Every federally or state chartered savings and loan association, savings bank, and
 18 other similar institution authorized to transact business in this state, with property
 19 and payroll within and without this state, shall, during January of each year, file
 20 with the Department of Revenue~~[Cabinet]~~ a report containing information and in
 21 such form as the department~~[cabinet]~~ may require.

22 (2) The Department of Revenue~~[Cabinet]~~ shall fix the fair cash value, as of January 1
 23 of each year, of the capital attributable to Kentucky in each financial institution
 24 included in subsection (1) of this section. The methodology employed by the
 25 department~~[cabinet]~~ shall be a three (3) step process as follows:

26 (a) The total value of deposits maintained in Kentucky less any amounts where
 27 the amount borrowed equals or exceeds the amount paid in by those members.

1 (b) The Kentucky apportioned value of capital shall include undivided profits,
 2 surplus, general reserves, and paid-up stock. For Agricultural Credit
 3 Associations chartered by the Farm Credit Administration, capital shall be
 4 computed by deducting the book value of the association's investment in any
 5 other wholly owned institution chartered by the Farm Credit Administration
 6 that is either subject to the tax imposed by KRS 136.300 or this section or that
 7 is exempt from state taxation by federal law. The Kentucky value of capital
 8 shall be determined by a fraction, the numerator of which is the receipts factor
 9 plus the outstanding loan balance factor plus the payroll factor, and the
 10 denominator of which is three (3).

11 (c) The values determined in steps (a) and (b) of this subsection shall be added
 12 together to determine total Kentucky capital and then reduced by the influence
 13 of ownership in tax-exempt United States obligations to determine Kentucky
 14 taxable capital. The influence of tax-exempt United States obligations is to be
 15 determined from the reports of condition filed with the applicable supervisory
 16 agency as follows: the average amount of tax-exempt United States
 17 obligations for the calendar year, over the average amount of total assets for
 18 the calendar year multiplied by total Kentucky capital. The
 19 department~~[cabinet]~~ shall immediately notify each institution of the value so
 20 fixed.

21 (3) The receipts factor specified in subsection (2)(b) of this section is a fraction, the
 22 numerator of which is all receipts derived from loans and other sources negotiated
 23 through offices or derived from customers in Kentucky, and the denominator of
 24 which is total business receipts for the preceding calendar year.

25 (4) The outstanding loan balance factor specified in subsection (2)(b) of this section is a
 26 fraction, the numerator of which is the average balance of outstanding loans
 27 negotiated from offices or made to customers in Kentucky. The denominator is the

1 average balance of all outstanding loans. The average outstanding loan balance is
2 determined by adding the outstanding loan balance at the beginning of the preceding
3 calendar year to the outstanding loan balance at the end of the preceding calendar
4 year and dividing by two (2). However, if the yearly beginning balance and ending
5 balance results in an inequitable factor, the average outstanding loan balance may
6 be computed on a monthly average balance.

7 (5) The payroll factor specified in subsection (2)(b) of this section shall be determined
8 for the preceding calendar year under the provisions of KRS 141.120(8)(b) and
9 regulations promulgated thereunder.

10 (6) By July 1 succeeding the filing of the report as provided in subsection (1) of this
11 section, each financial institution included in subsection (1) of this section shall pay
12 directly into the State Treasury a tax of one dollar (\$1) for each one thousand
13 dollars (\$1,000) paid in on its Kentucky taxable capital as fixed in subsection (2)(c)
14 of this section. The institution shall not be required to pay local taxes upon its
15 capital stock, surplus, undivided profits, notes, mortgages, or other credits, and the
16 tax provided by this section shall be in lieu of all taxes for state purposes on
17 intangible property of the institution, nor shall any depositor of the institution be
18 required to list his deposits for taxation under KRS 132.020. Failure to make reports
19 and pay taxes as provided in this section shall subject the institution to the same
20 penalties imposed for such failure on the part of the other corporations.

21 (7) If a financial institution included in subsection (1) of this section selects, it may
22 deduct taxes imposed in subsection (6) of this section from the dividends paid or
23 credited to a nonborrowing shareholder.

24 (8) Every Agricultural Credit Association chartered by the Farm Credit Administration
25 being authorized to transact business in Kentucky but having no employees located
26 within or without the state shall be subject to the same tax imposed pursuant to
27 either KRS 136.300 or this section as that imposed upon its wholly owned

1 Production Credit Association subsidiary. For purposes of computing Kentucky
 2 apportioned value of capital pursuant to subsection (2) of this section, those
 3 Agricultural Credit Associations subject to the tax imposed by this section shall
 4 utilize that Kentucky apportionment fraction computed and utilized by its wholly
 5 owned Production Credit Association subsidiary for the same report period.

6 Section 320. KRS 136.320 is amended to read as follows:

7 (1) Each life insurance company incorporated under the laws of and doing business in
 8 Kentucky shall value as of January 1 and report to the Department of Revenue
 9 ~~Cabinet~~ by April 1 each year, on forms prescribed by the Department of Revenue
 10 ~~Cabinet~~, the following:

11 (a) The fair cash value of the company's intangible personal property, hereinafter
 12 referred to as "capital," consisting of all money in hand, shares of stock, notes,
 13 bonds, accounts, and other credits, exclusive of due and deferred premiums,
 14 whether secured by mortgage, pledge, or otherwise, or unsecured.

15 (b) The fair cash value of the company's intangible personal property exempt
 16 from taxation by law.

17 (c) The aggregate amount of the company's reserves, reduced by the amount of
 18 due and deferred premiums, maintained in accordance with the applicable
 19 provisions of KRS 304.6-040 and 304.6-130 to 304.6-180, on all outstanding
 20 policies and contracts supplementary thereto.

21 (d) Other information as may be required by the Department of Revenue
 22 ~~Cabinet~~ to accurately determine the fair cash value of each company's
 23 "taxable capital" and "taxable reserves."

24 (2) Based on information supplied by each company and other information that may be
 25 available, the Department of Revenue~~Cabinet~~ shall value each company's
 26 "taxable capital" and "taxable reserves" as follows:

27 (a) "Taxable capital" shall be determined by deducting "taxable reserves" from

1 "capital," less exempt intangible personal property.

2 (b) "Taxable reserves" shall be determined by multiplying the aggregate amount
3 of reserves as computed in subsection (1)(c) of this section by the percentage
4 determined by dividing "capital," less exempt intangible personal property, by
5 "capital," including exempt intangible personal property.

6 (3) (a) An annual tax for state purposes shall be imposed against the fair cash value
7 of "taxable capital" for calendar years beginning before 2000, at a rate of
8 seventy cents (\$0.70) on each one hundred dollars (\$100).

9 (b) An annual tax for state purposes shall be imposed against every company
10 making an election pursuant to KRS 136.335 to be taxed under this section,
11 against the fair cash value of taxable capital for calendar years beginning in
12 2000 as follows:

- 13 1. For calendar year 2000, fifty-six cents (\$0.56) on each one hundred
14 dollars (\$100);
- 15 2. For calendar year 2001, forty-two cents (\$0.42) on each one hundred
16 dollars (\$100);
- 17 3. For calendar year 2002, twenty-eight cents (\$0.28) on each one hundred
18 dollars (\$100);
- 19 4. For calendar year 2003, fourteen cents (\$0.14) on each one hundred
20 dollars (\$100); and
- 21 5. For calendar year 2004 and each calendar year thereafter, one tenth of
22 one cent (\$0.001) on each one hundred dollars (\$100).

23 (c) An annual tax for state purposes shall be imposed at a rate of one-tenth of one
24 cent (\$0.001) on each one hundred dollars (\$100) of the fair cash value of
25 "taxable reserves".

26 (d) Beginning in tax year 2004 an insurer may offset the tax liability imposed
27 under this subsection against the tax liability imposed under subsection (4) of

1 this section.

2 (4) For calendar year 2000, and each calendar year thereafter, every company subject to
3 the tax imposed by subsection (3) of this section, and making an election pursuant
4 to KRS 136.335 to be taxed under this section, shall pay the following rates of tax
5 upon each one hundred dollars (\$100) of premium receipts:

- 6 (a) For calendar year 2000, thirty-eight cents (\$0.38);
- 7 (b) For calendar year 2001, seventy-two cents (\$0.72);
- 8 (c) For calendar year 2002, one dollar and two cents (\$1.02);
- 9 (d) For calendar year 2003, one dollar and twenty-eight cents (\$1.28); and
- 10 (e) For calendar year 2004 and each calendar year thereafter, one dollar and fifty
11 cents (\$1.50).

12 Every company subject to the tax imposed by this subsection shall, by March 1 of
13 each year, return to the Department of Revenue~~[Cabinet]~~ a statement under oath of
14 all premium receipts on business done in this state during the preceding calendar
15 year or since the last return was made. "Premium receipts" includes single
16 premiums, premiums received for original insurance, premiums received for
17 renewal, revival, or reinstatement of the policies, annual and periodical premiums,
18 dividends applied for premiums and additions, and all other premium payments
19 received on policies that have been written in this state, or on the lives of residents
20 of this state, or out of this state on business done in this state, less returned
21 premiums. No deduction shall be made for dividends on life insurance but
22 dividends on accident and health insurance policies may be deducted.

23 (5) The taxes imposed under subsections (3) and (4) of this section shall be in lieu of all
24 excise, license, occupational, or other taxes imposed by the state, county, city, or
25 other taxing district, except as provided in subsections (6) and (7) of this section.

26 (6) The county in which the principal office of the company is located may impose a
27 tax of fifteen cents (\$0.15) on each one hundred dollars (\$100) of "taxable capital."

- 1 (7) The city in which the principal office of the company is located may impose a tax of
 2 fifteen cents (\$0.15) on each one hundred dollars (\$100) of "taxable capital."
- 3 (8) The Department of Revenue~~[Cabinet]~~ shall by September 1 each year bill each
 4 company for the state taxes. It shall immediately certify to the county clerk of the
 5 county in which the principal office of the company is located the value of "taxable
 6 capital" subject to local taxation. The county clerk shall prepare and deliver a bill to
 7 the sheriff for collection of taxes collectible by the sheriff and shall certify the value
 8 to all other collecting officers of districts authorized to levy a tax.
- 9 (9) Each company's real and tangible personal property shall be subject to taxation at
 10 fair cash value by the state, county, school, and other taxing districts in which the
 11 property is located in the same manner and at the same rates as all other property of
 12 the same class.
- 13 (10) Taxes on property subject to taxation under this section shall be subject to the same
 14 discount and penalties as provided in KRS 134.020 and shall be collected in the
 15 same manner as taxes on property locally assessed, except that the state tax on the
 16 "taxable capital" and "taxable reserves" shall be collected directly by the
 17 Department of Revenue~~[Cabinet]~~.
- 18 (11) Any taxpayer subject to taxation under this section may protest in the manner
 19 provided in KRS 131.110.
- 20 Section 321. KRS 136.330 is amended to read as follows:
- 21 (1) Every life insurance company doing business in this state, other than fraternal
 22 assessment life insurance companies, shall, by March 1 of each year, return to the
 23 Department of Revenue~~[Cabinet]~~ a statement under oath of all premium receipts
 24 on business done in this state during the preceding calendar year or since the last
 25 return was made. "Premium receipts" includes single premiums, annuity premiums,
 26 premiums received for original insurance, premiums received for renewal, revival
 27 or reinstatement of the policies, annual and periodical premiums, dividends applied

1 for premiums and additions, and all other premium payments received on policies
2 that have been written in this state, or on the lives of residents of this state, or out of
3 this state on business done in this state, less returned premiums. No deduction shall
4 be made for dividends on life insurance or annuity policies, but dividends on
5 accident and health insurance policies may be deducted. Premium receipts shall not
6 include annuity premiums or annuity dividends beginning in calendar year 2000.

7 (2) (a) An annual tax on premium receipts shall be imposed against every company
8 making a return under this subsection for calendar years beginning before
9 2000 at a rate of two dollars (\$2) upon each one hundred dollars (\$100) of
10 premium receipts.

11 (b) An annual tax on premium receipts shall be imposed against every company
12 making an election pursuant to KRS 136.335 to be taxed under this section,
13 and every company making a return under this section, for calendar years
14 beginning in 2000 as follows:

- 15 1. For calendar year 2000, one dollar and ninety cents (\$1.90) upon each
16 one hundred dollars (\$100) of premium receipts;
- 17 2. For calendar year 2001, one dollar and eighty cents (\$1.80) upon each
18 one hundred dollars (\$100) of premium receipts;
- 19 3. For calendar year 2002, one dollar and seventy cents (\$1.70) upon each
20 one hundred dollars (\$100) of premium receipts;
- 21 4. For calendar year 2003, one dollar and sixty cents (\$1.60) upon each one
22 hundred dollars (\$100) of premium receipts; and
- 23 5. For calendar year 2004 and each calendar year thereafter, one dollar and
24 fifty cents (\$1.50) on each one hundred dollars (\$100) of premium
25 receipts.

26 (3) The health insurance contract or contracts for state employees as authorized by KRS
27 18A.225 shall not be subject to taxation under this section.

1 Section 322. KRS 136.335 is amended to read as follows:

2 Beginning with calendar year 2000, every life insurance company incorporated under the
 3 laws of and doing business in Kentucky shall make an irrevocable election whether to be
 4 taxed under the provisions of KRS 136.320 or 136.330. For insurance companies
 5 incorporated under the laws of and doing business in Kentucky, prior to January 1, 2000,
 6 the election shall be filed with the commissioner of insurance and the
 7 commissioner~~[secretary]~~ of the Department of Revenue~~[Cabinet]~~ on or before January 1,
 8 2000. For insurance companies applying for a certificate to do business in Kentucky as a
 9 domestic life insurance company, after January 1, 2000, the election shall be filed with
 10 the company's initial application for certificate of authority to do business in Kentucky.

11 Section 323. KRS 136.340 is amended to read as follows:

12 (1) Every stock insurance company, other than life, doing business in this state shall, on
 13 or before the first day of March of each year, return to the Department of Revenue~~[~~
 14 ~~Cabinet]~~ a statement under oath of all amounts paid to the company or its
 15 representative, whether designated as premiums or otherwise, for insurance or
 16 services incident thereto, on property or risks in this state during the preceding
 17 calendar year or since the last returns were made, including amounts received for
 18 reinsurance on Kentucky risks from unauthorized companies, and shall at the same
 19 time pay a tax of two dollars (\$2) upon each one hundred dollars (\$100) of such
 20 amounts paid to the company, less amounts returned on canceled policies and
 21 policies not taken.

22 (2) The health insurance contract or contracts for state employees as authorized by KRS
 23 18A.225 shall not be subject to taxation under this section.

24 Section 324. KRS 136.350 is amended to read as follows:

25 (1) All mutual companies other than life doing business under this law shall pay to the
 26 Department of Revenue~~[Cabinet]~~ on or before the first day of March in each year,
 27 a tax of two percent (2%) of all amounts paid to the company or its representative,

whether designated as premiums or otherwise, for insurance or services incident thereto, including amounts paid for membership or policy dues or fees, on property or risks in this state during the preceding calendar year, including amounts received for reinsurance on Kentucky risks from unauthorized companies.

(2) In addition to the foregoing tax, mutual insurance companies and Lloyd's insurers shall pay an annual tax as prescribed for stock insurance companies by KRS 136.360 and for like purposes.

(3) In computing premiums upon which tax is to be paid there shall be deducted, in both direct and reinsurance business, return premiums on canceled policies and policies not taken, and dividends paid or credited to policyholders.

(4) The provisions of this section shall not apply to domestic mutual companies, cooperative or assessment fire insurance companies.

(5) The health insurance contract or contracts for state employees as authorized by KRS 18A.225 and 18A.228 shall not be subject to taxation under this section.

Section 325. KRS 136.360 is amended to read as follows:

Every stock insurer other than life doing business in this state shall pay to the Department of Revenue ~~Cabinet~~ on or before the first day of March of each year, for the purpose of defraying the expenses authorized by KRS Chapter 227, and KRS Chapter 304, Subtitle 24, three-fourths of one percent (0.75%) of all amounts paid to such insurance company or its representative, whether such payments are designated as premiums or otherwise, during the previous calendar year for fire insurance and that portion of the premium reasonably allocable to insurance against the hazard of fire included in other coverages other than life and disability insurances. In computing such amounts there shall be deducted amounts refunded on policies canceled or not taken, and dividends paid or credited to policyholders. All amounts so collected shall be deposited in the general expenditure fund in the State Treasury.

Section 326. KRS 136.370 is amended to read as follows:

Each attorney, for the exchange of reciprocal or interinsurance contracts, under KRS Chapter 304, shall pay to the Department of Revenue~~[-cabinet]~~ on or before March 1 of each year a tax of two percent (2%) of the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, less all amounts returned to subscribers or accredited to their account as savings. In addition, the attorney shall pay an annual premium tax of three-fourths of one percent (0.75%) of all amounts as prescribed for every stock insurer by and for the purposes specified in KRS 136.360.

Section 327. KRS 136.390 is amended to read as follows:

- (1) All associations of underwriters authorized under KRS 304.3-040, 304.3-140, 304.28-010, 304.28-030, 304.28-040, and 304.28-050, and their representatives, shall make the same reports as are required of foreign stock insurance companies and their representatives transacting the same or similar kinds of insurance business in this state, and shall pay the same taxes as are required to be paid by such companies.
- (2) All foreign mutual assessment companies, associations, individual firms, underwriters or Lloyd's, having resident members doing business in this state, who shall enter into contracts of insurance with each other or into agreements to indemnify each other against losses by fire, lightning, windstorm or other casualties for which there is no premium charged or collected at the time insurance is made, shall be deemed to be doing an insurance business in this state, and shall annually, by July 30, pay to the Department of Revenue~~[-Cabinet]~~ a license tax of two dollars (\$2) upon each one hundred dollars (\$100) of assessments paid or collected in any one (1) year. Each resident member shall be liable to the state for the license tax and all interest and penalties.
- (3) No person shall fail or refuse to make a report giving all the data and information necessary to determine the amount of revenue due under subsection (2) of this section, or fail to make the report provided for in subsection (2) of this section, or

1 fail to pay the tax due thereon.

2 Section 328. KRS 136.392 is amended to read as follows:

- 3 (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers,
 4 which is either subject to or exempted from Kentucky premium taxes as levied
 5 pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or
 6 136.390, shall charge and collect a surcharge of one dollar and fifty cents
 7 (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or
 8 other charges, except for those municipal premium taxes, made by it for
 9 insurance coverage provided to its policyholders, on risk located in this state,
 10 whether the charges are designated as premiums, assessments, or otherwise.
 11 The premium surcharge shall be collected by the insurer from its
 12 policyholders at the same time and in the same manner that its premium or
 13 other charge for the insurance coverage is collected. The premium surcharge
 14 shall be disclosed to policyholders pursuant to administrative regulations
 15 promulgated by the commissioner of insurance. However, no insurer or its
 16 agent shall be entitled to any portion of any premium surcharge as a fee or
 17 commission for its collection. On or before the twentieth day of each month,
 18 each insurer shall report and remit to the Department of Revenue~~[Cabinet]~~,
 19 on forms as it may require, all premium surcharge moneys collected by it
 20 during its preceding monthly accounting period less any moneys returned to
 21 policyholders as applicable to the unearned portion of the premium on policies
 22 terminated by either the insured or the insurer. Insurers with an annual liability
 23 of less than one thousand dollars (\$1,000) for each of the previous two (2)
 24 calendar years may report and remit to the Department of Revenue~~[Cabinet]~~
 25 all premium surcharge moneys collected on a calendar year basis on or before
 26 the twentieth (20th) day of January of the following calendar year. The funds
 27 derived from the premium surcharge shall be deposited in the State Treasury,

1 and shall constitute a fund allocated for the uses and purposes of the
 2 Firefighters Foundation Program fund (KRS 95A.220 and 95A.262) and the
 3 Law Enforcement Foundation Program fund (KRS 15.430).

4 (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection
 5 shall be adjusted by the commissioner~~secretary~~ of revenue to a rate
 6 calculated to provide sufficient funds for the uses and purposes of the
 7 Firefighters Foundation Program fund as prescribed by KRS 95A.220 and
 8 95A.262 and the Law Enforcement Foundation Program fund as prescribed by
 9 KRS 15.430 for each fiscal year. The rate shall be calculated using as its base
 10 the number of local government units eligible for participation in the funds
 11 under applicable statutes as of January 1, 1994. To allow the
 12 commissioner~~secretary~~ of revenue to calculate an appropriate rate, the
 13 secretary for the Public Protection and Regulation Cabinet and the secretary
 14 for the Justice Cabinet shall certify to the commissioner~~secretary~~ of revenue,
 15 no later than January 1 of each year, the estimated budgets for the respective
 16 funds specified above, including any surplus moneys in the funds, which shall
 17 be incorporated into the consideration of the adjusted rate for the next
 18 biennium. As soon as practical, the commissioner~~secretary~~ of revenue shall
 19 advise the commissioner of insurance of the new rate and the commissioner of
 20 revenue shall inform the affected insurers. The rate adjustment process shall
 21 continue on a biennial basis.

22 (2) Within five (5) days after the end of each month, all insurance premium surcharge
 23 proceeds deposited in the State Treasury as set forth in this section shall be paid by
 24 the State Treasurer into the Firefighters Foundation Program fund trust and agency
 25 account and the Law Enforcement Foundation Program fund trust and agency
 26 account. The amount paid into each account shall be proportionate to each fund's
 27 respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to

the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse. Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.

(3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.

(4) No later than July 1 of each year, the Department of Insurance shall provide the Department of Revenue ~~Cabinet~~ with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the

preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue~~[-Cabinet]~~ shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section, based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the Department of Insurance. The Department of Revenue~~[-Cabinet]~~ shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year, and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the Department of Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue~~[-Cabinet]~~ shall not identify or divulge the confidential tax information of any individual insurer in this report.

Section 329. KRS 136.410 is amended to read as follows:

Every bail bondsman doing business in this Commonwealth shall, on or before the first day of March of each year, return to the Department of Revenue~~[-Cabinet]~~ a statement of all amounts paid to him or his representatives, as premiums for bail bonds written in the courts of this Commonwealth during the preceding calendar year, or since the last returns were made, and shall at the same time pay a tax of two dollars (\$2) upon each one hundred dollars (\$100) of such amounts paid to the bail bondsman or his representatives. Amounts received for reimbursement for expenses or court costs are not to be considered as premiums for the purposes of this section.

Section 330. KRS 136.500 is amended to read as follows:

As used in KRS 136.500 to 136.575, unless the context requires otherwise:

- (1) "Billing address" means the location indicated in the books and records of the financial institution, on the first day of the taxable year or the date in the taxable

1 year when the customer relationship began, as the address where any notice,
2 statement, or bill relating to a customer's account is mailed;

3 (2) "Borrower located in this state" means a borrower, other than a credit card holder,
4 that is engaged in a trade or business that maintains its commercial domicile in this
5 state or a borrower that is not engaged in a trade or business;

6 (3) "Credit card holder located in this state" means a credit card holder whose billing
7 address is in this state;

8 (4) "~~Department~~~~[Cabinet]~~" means the Department of Revenue~~[Cabinet]~~;

9 (5) "Commercial domicile" means:

10 (a) The location from which the trade or business is principally managed and
11 directed; or

12 (b) The state of the United States or the District of Columbia from which the
13 financial institution's trade or business in the United States is principally
14 managed and directed, if a financial institution is organized under the laws of
15 a foreign country, the Commonwealth of Puerto Rico, or any territory or
16 possession of the United States.

17 It shall be presumed, subject to rebuttal, that the location from which the financial
18 institution's trade or business is principally managed and directed is the state of the
19 United States or the District of Columbia to which the greatest number of
20 employees are regularly connected or out of which they are working, irrespective of
21 where the services of the employees are performed, as of the last day of the taxable
22 year;

23 (6) "Compensation" means wages, salaries, commissions, and any other form of
24 remuneration paid to employees for personal services that are included in the
25 employee's gross income under the Internal Revenue Code. In the case of employees
26 not subject to the Internal Revenue Code, the determination of whether the
27 payments would constitute gross income to the employees under the Internal

- 1 Revenue Code shall be made as though the employees were subject to the Internal
2 Revenue Code;
- 3 (7) "Credit card" means credit, travel, or entertainment card;
- 4 (8) "Credit card issuer's reimbursement fee" means the fee a financial institution
5 receives from a merchant's bank because one (1) of the persons to whom the
6 financial institution has issued a credit card has charged merchandise or services to
7 the credit card;
- 8 (9) "Employee" means, with respect to a particular financial institution, "employee" as
9 defined in Section 3121(d) of the Internal Revenue Code;
- 10 (10) "Financial institution" means:
- 11 (a) A national bank organized as a body corporate and existing or in the process
12 of organizing as a national bank association pursuant to the provisions of the
13 National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31,
14 1997, exclusive of any amendments made subsequent to that date;
- 15 (b) Any bank or trust company incorporated or organized under the laws of any
16 state, except a banker's bank organized under KRS 287.135;
- 17 (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631,
18 in effect on December 31, 1997, exclusive of any amendments made
19 subsequent to that date, or any corporation organized after December 31,
20 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on
21 December 31, 1997; or
- 22 (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec.
23 3101, in effect on December 31, 1997, exclusive of any amendments made
24 subsequent to that date, or any agency or branch of a foreign depository
25 established after December 31, 1997, that meets the requirements of 12 U.S.C.
26 sec. 3101 in effect on December 31, 1997;
- 27 (11) "Gross rents" means the actual sum of money or other consideration payable for the

1 use or possession of property.

2 (a) "Gross rents" includes but is not limited to:

- 3 1. Any amount payable for the use or possession of real property or
4 tangible property, whether designated as a fixed sum of money or as a
5 percentage of receipts, profits, or otherwise;
- 6 2. Any amount payable as additional rent or in lieu of rent, such as interest,
7 taxes, insurance, repairs, or any other amount required to be paid by the
8 terms of a lease or other arrangement; and
- 9 3. A proportionate part of the cost of any improvement to real property
10 made by or on behalf of the financial institution which reverts to the
11 owner or lessor upon termination of a lease or other arrangement. The
12 amount to be included in gross rents is the amount of amortization or
13 depreciation allowed in computing the taxable income base for the
14 taxable year. However, where a building is erected on leased land by or
15 on behalf of the financial institution, the value of the land is determined
16 by multiplying the gross rent by eight (8) and the value of the building is
17 determined in the same manner as if owned by the financial institution;

18 (b) The following are not included in the term "gross rents":

- 19 1. Reasonable amounts payable as separate charges for water and electric
20 service furnished by the lessor;
- 21 2. Reasonable amounts payable as service charges for janitorial services
22 furnished by the lessor;
- 23 3. Reasonable amounts payable for storage, if these amounts are payable
24 for space not designated and not under the control of the financial
25 institution; and
- 26 4. That portion of any rental payment which is applicable to the space
27 subleased from the financial institution and not used by it;

1 (12) "Internal Revenue Code" means the Internal Revenue Code, Title 26 U.S.C., in
2 effect on December 31, 2001, exclusive of any amendments made subsequent to
3 that date;

4 (13) "Loan" means any extension of credit resulting from direct negotiations between the
5 financial institution and its customer, and the purchase, in whole or in part, of the
6 extension of credit from another. Loans include participations, syndications, and
7 leases treated as loans for federal income tax purposes. Loans shall not include
8 properties treated as loans under Section 595 of the Internal Revenue Code, futures
9 or forward contracts, options, notional principal contracts such as swaps, credit card
10 receivables, including purchased credit card relationships, noninterest-bearing
11 balances due from depository institutions, cash items in the process of collection,
12 federal funds sold, securities purchased under agreements to resell, assets held in a
13 trading account, securities, interests in a real estate mortgage investment company,
14 or other mortgage-backed or asset-backed security, and other similar items;

15 (14) "Loan secured by real property" means a loan or other obligation for which fifty
16 percent (50%) or more of the aggregate value of the collateral used to secure the
17 loan or other obligation, when valued at fair market value as of the time the original
18 loan or obligation was incurred, was real property;

19 (15) "Merchant discount" means the fee or negotiated discount charged to a merchant by
20 the financial institution for the privilege of participating in a program where a credit
21 card is accepted in payment for merchandise or services sold to the card holder;

22 (16) "Person" means an individual, estate, trust, partnership, corporation, limited liability
23 company, or any other business entity;

24 (17) "Principal base of operations" means:

25 (a) With respect to transportation property, the place from which the property is
26 regularly directed or controlled; and

27 (b) With respect to an employee:

- 1 1. The place the employee regularly starts work and to which the employee
- 2 customarily returns in order to receive instructions from his or her
- 3 employer; or
- 4 2. If the place referred to in subparagraph 1. of this paragraph does not
- 5 exist, the place the employee regularly communicates with customers or
- 6 other persons; or
- 7 3. If the place referred to in subparagraph 2. of this paragraph does not
- 8 exist, the place the employee regularly performs any other functions
- 9 necessary to the exercise of the employee's trade or profession at some
- 10 other point or points;
- 11 (18) "Real property owned" and "tangible personal property owned" mean real and
- 12 tangible personal property, respectively, on which the financial institution may
- 13 claim depreciation for federal income tax purposes, or property to which the
- 14 financial institution holds legal title and on which no other person may claim
- 15 depreciation for federal income tax purposes or could claim depreciation if subject
- 16 to federal income tax. Real and tangible personal property do not include coin,
- 17 currency, or property acquired in lieu of or pursuant to a foreclosure;
- 18 (19) "Regular place of business" means an office at which the financial institution carries
- 19 on its business in a regular and systematic manner and which is continuously
- 20 maintained, occupied, and used by employees of the financial institution;
- 21 (20) "State" means a state of the United States, the District of Columbia, the
- 22 Commonwealth of Puerto Rico, any territory or possession of the United States, or
- 23 any foreign country;
- 24 (21) "Syndication" means an extension of credit in which two (2) or more persons fund
- 25 and each person is at risk only up to a specified percentage of the total extension of
- 26 credit or up to a specified dollar amount;
- 27 (22) "Taxable year" means calendar year 1996 and every calendar year thereafter;

1 (23) "Transportation property" means vehicles and vessels capable of moving under their
2 own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any
3 equipment or containers attached to the property, such as rolling stock, barges, or
4 trailers;

5 (24) "United States obligations" means all obligations of the United States exempt from
6 taxation under 31 U.S.C. sec. 3124(a) or exempt under the United States
7 Constitution or any federal statute, including the obligations of any instrumentality
8 or agency of the United States that are exempt from state or local taxation under the
9 United States Constitution or any statute of the United States; and

10 (25) "Kentucky obligations" means all obligations of the Commonwealth of Kentucky,
11 its counties, municipalities, taxing districts, and school districts, exempt from
12 taxation under the Kentucky Revised Statutes and the Constitution of Kentucky.

13 Section 331. KRS 136.525 is amended to read as follows:

14 (1) A financial institution whose business activity is taxable both within and without
15 this Commonwealth shall apportion its net capital pursuant to the provisions of this
16 section.

17 (2) Net capital shall be apportioned to this Commonwealth by multiplying total net
18 capital by the apportionment percentage. The apportionment percentage is
19 determined by adding together the financial institution's receipts factor as
20 determined under the provisions of KRS 136.530, property factor as determined
21 under the provisions of KRS 136.535, and payroll factor as determined under the
22 provisions of KRS 136.540 and dividing the sum by three (3). If one (1) of the
23 factors is missing, the two (2) remaining factors are added and the sum is divided by
24 two (2). If two (2) of the factors are missing, the remaining factor is the
25 apportionment percentage. A factor is missing if both its numerator and
26 denominator are zero (0), but it is not missing merely because the numerator is zero
27 (0).

- 1 (3) Each factor shall be calculated by the method of accounting used by the financial
2 institution for the taxable year.
- 3 (4) If the apportionment provisions of KRS 136.500 to 136.575 do not fairly represent
4 the extent of the financial institution's business activity in this Commonwealth, the
5 financial institution may petition for or the department~~[cabinet]~~ may require, in
6 respect to all or any part of the financial institution's business activity, if reasonable:
- 7 (a) Separate accounting;
 - 8 (b) The exclusion of any one (1) or more of the factors;
 - 9 (c) The inclusion of one (1) or more additional factors which will fairly represent
10 the financial institution's business activity in this Commonwealth; or
 - 11 (d) The employment of any other method to effectuate an equitable apportionment
12 of the financial institution's net capital.

13 Section 332. KRS 136.530 is amended to read as follows:

- 14 (1) The receipts factor is a fraction, the numerator of which is the receipts of the
15 financial institution in this Commonwealth during the taxable year as determined by
16 subsection (2) of this section and the denominator of which is the receipts of the
17 financial institution within and without this Commonwealth during the taxable year.
18 Receipts shall include the following:
- 19 (a) Receipts from the lease or rental of real property owned by the financial
20 institution;
 - 21 (b) Receipts from the lease or rental of tangible personal property owned by the
22 financial institution;
 - 23 (c) Interest and fees or penalties in the nature of interest from loans secured by
24 real property;
 - 25 (d) Interest and fees or penalties in the nature of interest from loans not secured
26 by real property;
 - 27 (e) Net gains from the sale of loans. Net gains from the sale of loans includes

1 income recorded under the coupon stripping rules of Section 1286 of the
2 Internal Revenue Code;

3 (f) Interest and fees or penalties in the nature of interest from credit card
4 receivables and receipts from fees charged to card holders, such as annual
5 fees;

6 (g) Net gains, but not less than zero (0), from the sale of credit card receivables;

7 (h) All credit card issuer's reimbursement fees;

8 (i) Receipts from merchant discount. Receipts from merchant discount shall be
9 computed net of any cardholder charge backs, but shall not be reduced by any
10 interchange transaction fees or by any issuer's reimbursement fees paid to
11 another for charges made by its card holders;

12 (j) Loan servicing fees derived from loans secured by real property;

13 (k) Loan servicing fees derived from loans not secured by real property;

14 (l) Interest, dividends, net gains, but not less than zero (0), and other income
15 from investment assets and activities and from trading assets and activities.
16 Investment assets and activities and trading assets and activities include but
17 are not limited to investment securities, trading account assets, federal funds,
18 securities purchased and sold under agreements to resell or repurchase,
19 options, futures contracts, forward contracts, notional principal contracts such
20 as swaps, equities, and foreign currency transactions. The receipts factor shall
21 include the following amounts:

- 22 1. The amount by which interest from federal funds sold and securities
23 purchased under resale agreements exceeds interest expense on federal
24 funds purchased and securities sold under repurchase agreements; and
- 25 2. The amount by which interest, dividends, gains, and other income from
26 trading assets and activities, including but not limited to assets and
27 activities in the matched book, in the arbitrage book, and foreign

1 currency transactions, exceed amounts paid in lieu of interest, amounts
2 paid in lieu of dividends, and losses from these assets and activities;

3 (m) All receipts derived from sales that would be included in the factor established
4 by KRS 136.070(3)(d)1., 2., and 3.; and

5 (n) Receipts from services not otherwise specifically listed.

6 (2) A determination of whether receipts should be included in the numerator of the
7 fraction shall be made as follows:

8 (a) Receipts from the lease or rental of real property owned by the financial
9 institution shall be included in the numerator if the property is located within
10 this Commonwealth or receipts from the sublease of real property if the
11 property is located within this Commonwealth.

12 (b) 1. Except as described in subparagraph 2. of this paragraph, receipts from
13 the lease or rental of tangible personal property owned by the financial
14 institution shall be included in the numerator if the property is located
15 within this Commonwealth when it is first placed in service by the
16 lessee.

17 2. Receipts from the lease or rental of transportation property owned by the
18 financial institution are included in the numerator of the receipts factor
19 to the extent that the property is used in this Commonwealth. The extent
20 an aircraft will be deemed to be used in this Commonwealth and the
21 amount of receipts that is to be included in the numerator of this
22 Commonwealth's receipts factor is determined by multiplying all the
23 receipts from the lease or rental of the aircraft by a fraction, the
24 numerator of which is the number of landings of the aircraft in this
25 Commonwealth and the denominator of which is the total number of
26 landings of the aircraft. If the extent of the use of any transportation
27 property within this Commonwealth cannot be determined, then the

property shall be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle shall be deemed to be used wholly in the state in which it is registered.

(c) 1. Interest and fees or penalties in the nature of interest from loans secured by real property shall be included in the numerator if the property is located within this Commonwealth. If the property is located both within this Commonwealth and one (1) or more other states, receipts shall be included if more than fifty percent (50%) of the fair market value of the real property is located within this Commonwealth. If more than fifty percent (50%) of the fair market value of the real property is not located within any one (1) state, then the receipts described in this subparagraph shall be included in the numerator if the borrower is located in this Commonwealth.

2. The determination of whether the real property securing a loan is located within this Commonwealth shall be made as of the time the original agreement was made, and any subsequent substitutions of collateral shall be disregarded.

(d) Interest and fees or penalties in the nature of interest from loans not secured by real property shall be included in the numerator if the borrower is located in this Commonwealth.

(e) Net gains from the sale of loans shall be included in the numerator as provided in subparagraphs 1. and 2. of this paragraph. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

1. The amount of net gains, but not less than zero (0), from the sale of loans secured by real property included in the numerator is determined by multiplying net gains by a fraction the numerator of which is the

1 amount included in the numerator of the receipts factor pursuant to
 2 paragraph (c) of this subsection and the denominator of which is the
 3 total amount of interest and fees or penalties in the nature of interest
 4 from loans secured by real property.

5 2. The amount of net gains, but not less than zero (0), from the sale of
 6 loans not secured by real property included in the numerator is
 7 determined by multiplying net gains by a fraction the numerator of
 8 which is the amount included in the numerator of the receipts factor
 9 pursuant to paragraph (d) of this subsection and the denominator of
 10 which is the total amount of interest and fees or penalties in the nature of
 11 interest from loans not secured by real property.

12 (f) Interest and fees or penalties in the nature of interest from credit card
 13 receivables and receipts from fees charged to card holders, such as annual
 14 fees, shall be included in the numerator if the billing address of the card
 15 holder is in this Commonwealth.

16 (g) Net gains, but not less than zero (0), from the sale of credit card receivables to
 17 be included in the numerator shall be determined by multiplying the amount
 18 established in paragraph (g) of subsection (1) of this section by a fraction the
 19 numerator of which is the amount included in the numerator of the receipts
 20 factor pursuant to paragraph (f) of this subsection and the denominator of
 21 which is the financial institution's total amount of interest and fees or penalties
 22 in the nature of interest from credit card receivables and fees charged to card
 23 holders.

24 (h) Credit card issuer's reimbursement fees to be included in the numerator shall
 25 be determined by multiplying the amount established in paragraph (h) of
 26 subsection (1) of this section by a fraction the numerator of which is the
 27 amount included in the numerator of the receipts factor pursuant to paragraph

(f) of this subsection and the denominator of which is the financial institution's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Receipts from merchant discount shall be included in the numerator if the commercial domicile of the merchant is in this Commonwealth. Receipts from merchant discount shall be computed net of any cardholder charge backs but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(j) 1. a. Loan servicing fees derived from loans secured by real property to be included in the numerator shall be determined by multiplying the amount determined under paragraph (j) of subsection (1) of this section by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b. Loan servicing fees derived from loans not secured by real property to be included in the numerator shall be determined by multiplying the amount determined under paragraph (k) of subsection (1) of this section by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (d) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

2. In circumstances in which the financial institution receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include the fees if the

1 borrower is located in this Commonwealth.

2 (k) Receipts from services not otherwise apportioned under this section shall be
3 included in the numerator if the service is performed in this Commonwealth.
4 If the service is performed both within and without this Commonwealth, the
5 numerator of the receipts factor includes receipts from services not otherwise
6 apportioned under this section, if a greater proportion of the income-
7 producing activity is performed in this Commonwealth based on cost of
8 performance.

9 (l) 1. The numerator of the receipts factor includes interest, dividends, net
10 gains, but not less than zero (0), and other income from investment
11 assets and activities and from trading assets and activities described in
12 paragraph (l) of subsection (1) of this section that are attributable to this
13 Commonwealth.

14 a. The amount of interest, dividends, net gains, but not less than zero
15 (0), and other income from investment assets and activities in the
16 investment account to be attributed to this Commonwealth and
17 included in the numerator is determined by multiplying all income
18 from the assets and activities by a fraction the numerator of which
19 is the average value of the assets that are properly assigned to a
20 regular place of business of the financial institution within this
21 Commonwealth and the denominator of which is the average value
22 of all the assets.

23 b. The amount of interest from federal funds sold and purchased and
24 from securities purchased under resale agreements and securities
25 sold under repurchase agreements attributable to this
26 Commonwealth and included in the numerator is determined by
27 multiplying the amount described in subparagraph 1. of paragraph

(l) of subsection (1) of this section from funds and securities by a fraction the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the average value of all funds and securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in subdivisions a. and b. of this subparagraph, attributable to this Commonwealth and included in the numerator is determined by multiplying the amount described in subparagraph 2. of paragraph (l) of subsection (1) of this section by a fraction the numerator of which is the average value of trading assets which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the average value of all assets.

d. For purposes of this subparagraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in KRS 136.535(3) and (4).

2. In lieu of using the method set forth in subparagraph 1. of this paragraph, the financial institution may elect, or the department~~[cabinet]~~ may require in order to fairly represent the business activity of the financial institution in this Commonwealth, the use of the method set forth in this subparagraph.

- 1 a. The amount of interest, dividends, net gains, but not less than zero
2 (0), and other income from investment assets and activities in the
3 investment account to be attributed to this Commonwealth and
4 included in the numerator is determined by multiplying all income
5 from assets and activities by a fraction the numerator of which is
6 the gross income from assets and activities which are properly
7 assigned to a regular place of business of the financial institution
8 within this Commonwealth and the denominator of which is the
9 gross income from all assets and activities.
- 10 b. The amount of interest from federal funds sold and purchased and
11 from securities purchased under resale agreements and securities
12 sold under repurchase agreements attributable to this
13 Commonwealth and included in the numerator is determined by
14 multiplying the amount described in subparagraph 1. of paragraph
15 (l) of subsection (1) of this section from funds and securities by a
16 fraction the numerator of which is the gross income from funds
17 and securities which are properly assigned to a regular place of
18 business of the financial institution within this Commonwealth and
19 the denominator of which is the gross income from all funds and
20 securities.
- 21 c. The amount of interest, dividends, gains, and other income from
22 trading assets and activities, including but not limited to assets and
23 activities in the matched book, in the arbitrage book and foreign
24 currency transactions, but excluding amounts described in
25 subdivisions a. and b. of this subparagraph, attributable to this
26 Commonwealth and included in the numerator is determined by
27 multiplying the amount described in subparagraph 2. of paragraph

(l) of subsection (1) of this section by a fraction the numerator of which is the gross income from trading assets and activities which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the gross income from all assets and activities.

3. If the financial institution elects or is required by the department~~[cabinet]~~ to use the method set forth in subparagraph 2. of this paragraph, it shall use this method on all subsequent returns unless the financial institution receives prior permission from the department~~[cabinet]~~ to use, or the department~~[cabinet]~~ requires, a different method.

4. The financial institution shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside this Commonwealth by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this Commonwealth. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business and one (1) regular place of business is in this Commonwealth and one (1) regular place of business is outside this Commonwealth, the asset or activity shall be considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the financial institution demonstrates to the contrary, the policies and guidelines shall be presumed to be established at the commercial domicile of the financial institution.

(m) The numerator of the receipts factor includes all other receipts derived from sales as determined pursuant to the provisions set forth in KRS 136.070(3)(d)1., 2., and 3.

(n) 1. All receipts that would be assigned under this section to a state in which the financial institution is not taxable shall be included in the numerator of the receipts factor, if the financial institution's commercial domicile is in this Commonwealth.

2. For purposes of subparagraph 1. of this paragraph, "taxable" means either:

a. That a financial institution is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax including a bank shares tax, a single business tax, an earned surplus tax, or any tax which is imposed upon or measured by net income; or

b. That another state has statutory authority to subject the financial institution to any of the taxes in subdivision a. of this subparagraph, whether in fact the state does or does not impose the tax.

Section 333. KRS 136.535 is amended to read as follows:

(1) As used in this section:

(a) "Administration" means the process of managing an account. The process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. The activity is located at the regular place of business that oversees this activity;

1 (b) "Approval" means the procedure whereby employees or the board of directors
2 of the financial institution make the final determination whether to enter into
3 the agreement. The activity is located at the regular place of business which
4 the financial institution's employees making the final determination are
5 regularly connected with or working out of, regardless of where the services of
6 the employees were actually performed. If the board of directors makes the
7 final determination, the activity is located at the commercial domicile of the
8 financial institution;

9 (c) "Investigation" means the procedure whereby employees of the financial
10 institution determine the credit worthiness of the customer as well as the
11 degree of risk involved in making a particular agreement. The activity is
12 located at the regular place of business which the financial institution's
13 employees making the investigation are regularly connected with or working
14 out of, regardless of where the services of the employees were actually
15 performed;

16 (d) "Negotiation" means the procedure whereby employees of the financial
17 institution and its customer determine the terms of the agreement, including
18 the amount, duration, interest rate, frequency of repayment, currency
19 denomination, and security required. The activity is located at the regular
20 place of business which the financial institution's employees are regularly
21 connected with or out of, regardless of where the services of the employees
22 were actually performed;

23 (e) "Participation" means an extension of credit in which an undivided ownership
24 interest is held on a pro rata basis in a single loan or pool of loans and related
25 collateral. In a loan participation, the credit originator initially makes the loan
26 and then subsequently resells all or a portion of it to other lenders. The
27 participation may or may not be known to the borrower; and

1 (f) "Solicitation" occurs when:

2 1. An employee of the financial institution initiates contact with the
3 customer. The activity is located at the regular place of business which
4 the financial institution's employee making the contact is regularly
5 connected with or working out of, regardless of where the services of the
6 employee were actually performed; or

7 2. The customer initiates the contact with the financial institution. If the
8 customer's initial contact was not at a regular place of business of the
9 financial institution, the regular place of business, if any, where the
10 solicitation occurred is determined by the facts in each case.

11 (2) The property factor is a fraction, the numerator of which is the average value of real
12 property and tangible personal property rented to the financial institution that is
13 located or used within this Commonwealth during the taxable year, the average
14 value of the financial institution's real and tangible personal property owned that is
15 located or used within this Commonwealth during the taxable year, and the average
16 value of the financial institution's loans and credit card receivables that are located
17 within this Commonwealth during the taxable year, and the denominator of which is
18 the average value of all such property located or used within and without this
19 Commonwealth during the taxable year. Average value of property is determined
20 under subsection (4) of this section.

21 (3) (a) The value of real property and tangible personal property owned by the
22 financial institution is the original cost or other basis of property for federal
23 income tax purposes without regard to depletion, depreciation, or
24 amortization.

25 (b) Loans are valued at their outstanding principal balance, without regard to any
26 reserve for bad debts. If a loan is charged off in whole or in part for federal
27 income tax purposes, the portion of the loan charged off is not outstanding. A

1 specifically-allocated reserve established pursuant to regulatory or financial
 2 accounting guidelines which is treated as charged off for federal income tax
 3 purposes shall be treated as charged off for purposes of this section.

4 (c) Credit card receivables are valued at their outstanding principal balance,
 5 without regard to any reserve for bad debts. If a credit card receivable is
 6 charged off in whole or in part for federal income tax purposes, the portion of
 7 the receivable charged off is not outstanding.

8 (4) The average value of property owned by the financial institution is computed on an
 9 annual basis by adding the value of the property on the first day of the taxable year
 10 and the value on the last day of the taxable year and dividing the sum by two (2). If
 11 averaging on this basis does not properly reflect average value, the
 12 department~~[cabinet]~~ may require averaging on a more frequent basis. The financial
 13 institution may request permission from the department~~[cabinet]~~ to average on a
 14 more frequent basis. When averaging on a more frequent basis is authorized by the
 15 department~~[cabinet]~~, the same method of valuation shall be used consistently by the
 16 financial institution with respect to property within and without this Commonwealth
 17 and on all subsequent returns unless the financial institution receives prior
 18 permission from the department~~[cabinet]~~ or the department~~[cabinet]~~ requires a
 19 different method of determining average value.

20 (5) (a) The average value of real property and tangible personal property that the
 21 financial institution has rented from another and which is not treated as
 22 property owned by the financial institution for federal income tax purposes
 23 shall be determined annually by multiplying the gross rents payable during the
 24 taxable year by eight (8).

25 (b) Where the use of the general method described in this subsection results in
 26 inaccurate valuations of rented property, any other method which properly
 27 reflects the value may be adopted by the department~~[cabinet]~~ or by the

1 financial institution when approved in writing by the department[cabinet].

2 Once approved, the alternative method of valuation shall be used on all
3 subsequent returns unless the financial institution receives prior approval from
4 the department[cabinet] or the department[cabinet] requires a different
5 method of valuation.

6 (6) (a) Except as described in paragraph (b) of this subsection, real property and
7 tangible personal property owned by or rented to the financial institution is
8 considered to be located within this Commonwealth if it is physically located,
9 situated, or used within this Commonwealth.

10 (b) Transportation property is included in the numerator of the property factor to
11 the extent that the property is used in this Commonwealth. The extent to
12 which an aircraft shall be deemed to be used in this Commonwealth and the
13 amount of value that is to be included in the numerator of this
14 Commonwealth's property factor is determined by multiplying the average
15 value of the aircraft by a fraction the numerator of which is the number of
16 landings of the aircraft in this Commonwealth and the denominator of which
17 is the total number of landings of the aircraft everywhere. If the extent of the
18 use of any transportation property within this Commonwealth cannot be
19 determined, then the property shall be deemed to be used wholly in the state in
20 which the property has its principal base of operations. A motor vehicle shall
21 be deemed to be used wholly in the state in which it is registered.

22 (7) (a) 1. A loan is considered to be located within this Commonwealth if it is
23 properly assigned to a regular place of business of the financial
24 institution within this Commonwealth.

25 2. A loan is properly assigned to the regular place of business with which it
26 has a preponderance of substantive contacts. A loan assigned by the
27 financial institution to a regular place of business without the

1 Commonwealth shall be presumed to have been properly assigned if:

- 2 a. The financial institution has assigned, in the regular course of its
3 business, the loan on its records to a regular place of business
4 consistent with federal or state regulatory requirements;
- 5 b. The assignment on its records is based upon substantive contacts
6 of the loan to the regular place of business; and
- 7 c. The financial institution uses the records reflecting assignment of
8 loans for the filing of all state and local tax returns for which an
9 assignment of loans to a regular place of business is required.

10 3. The presumption of proper assignment of a loan provided in
11 subparagraph 2. of this paragraph may be rebutted upon a showing by
12 the department~~[cabinet]~~, supported by a preponderance of the evidence,
13 that the preponderance of substantive contacts regarding the loan did not
14 occur at the regular place of business to which it was assigned on the
15 financial institution's records. When the presumption has been rebutted,
16 the loan shall then be located within this Commonwealth if the financial
17 institution had a regular place of business within this Commonwealth at
18 the time the loan was made and the financial institution fails to show, by
19 a preponderance of the evidence, that the preponderance of substantive
20 contacts regarding the loan occurred outside this Commonwealth.

21 (b) For financial institutions with commercial domicile in this Commonwealth as
22 defined in KRS 136.500, it shall be presumed, subject to rebuttal by the
23 financial institution on a showing supported by the preponderance of
24 evidence, that the preponderance of substantive contacts regarding the loan
25 occurred within this Commonwealth.

26 (c) To determine the state in which the preponderance of substantive contacts
27 relating to a loan have occurred, the facts and circumstances regarding the

loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan as defined in subsection (1) of this section.

(8) Credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (7) of this section.

(9) A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if that loan has a preponderance of substantive contacts to a regular place of business there.

Section 334. KRS 136.545 is amended to read as follows:

(1) On or before the March 15 following each taxable year, a return for the preceding taxable year shall be filed with the department~~[cabinet]~~ in the form and manner prescribed by the department~~[cabinet]~~, together with payment of any tax due.

(2) A return shall be filed by each financial institution.

(3) The return shall show the amount of taxes for the period covered by the return and other information necessary for the proper administration of KRS 136.500 to 136.575.

(4) The department~~[cabinet]~~ shall, upon written request received on or prior to the due date of the return and tax, grant an automatic extension of up to ninety (90) days for the filing of returns. An extension of time to file a return does not extend the payment of tax due, which shall be estimated by the financial institution and paid on or before the date specified in subsection (1) of this section.

(5) If the time for filing a return is extended, the financial institution shall pay, as part of the tax, an amount equal to the tax interest rate as defined in KRS 131.010(6) on the tax shown due on the return but not previously paid, from the time the tax was due until the return is actually filed with the department~~[cabinet]~~.

1 Section 335. KRS 136.550 is amended to read as follows:

- 2 (1) As soon as practicable after each return is received, the department~~[cabinet]~~ shall
 3 examine and audit it. If the amount of tax computed by the department~~[cabinet]~~ is
 4 greater than the amount returned by the financial institution, the excess shall be
 5 assessed by the department~~[cabinet]~~ within four (4) years from the date prescribed
 6 by law for the filing of a return including an extension of time for filing, except as
 7 provided in this subsection. A notice of the assessment shall be mailed to the
 8 financial institution.
- 9 (a) In the case of a failure to file a return or of a fraudulent return, the excess may
 10 be assessed at any time.
- 11 (b) In the case of a return wherein a financial institution understates its net capital
 12 or omits from net capital an amount properly includible therein or both, which
 13 understatement or omission or both is in excess of twenty-five percent (25%)
 14 of the amount of net capital stated in the return, the excess may be assessed at
 15 any time within six (6) years after the return was filed.
- 16 (2) For the purpose of subsection (1) of this section, a return filed before the last day
 17 prescribed by law for the filing shall be considered as filed on the last day. The
 18 times provided for in subsection (1) of this section may be extended by agreement
 19 between the financial institution and the department~~[cabinet]~~.

20 Section 336. KRS 136.560 is amended to read as follows:

- 21 (1) Every financial institution shall keep records, receipts, invoices, and other pertinent
 22 papers in the form as the department~~[cabinet]~~ may require.
- 23 (2) Every financial institution that files the returns required under KRS 136.545 shall
 24 keep records for not less than six (6) years from the making of records unless the
 25 department~~[cabinet]~~ in writing authorizes their destruction at an earlier date.

26 Section 337. KRS 136.575 is amended to read as follows:

- 27 (1) As used in this section, "deposits" means all demand and time deposits, excluding

1 deposits of the United States government, state and political subdivisions, other
2 financial institutions, public libraries, educational institutions, religious institutions,
3 charitable institutions, and certified and officers' checks.

4 (2) Counties, cities, and urban-county governments may impose a franchise tax on
5 financial institutions measured by the deposits in the institutions located within the
6 jurisdiction of the county, city, or urban-county government at a rate not to exceed
7 twenty-five thousandths of one percent (0.025%) of the deposits if imposed by
8 counties and cities and at a rate not to exceed fifty thousandths of one percent
9 (0.050%) of the deposits if imposed by urban-county governments. The amount and
10 location of deposits in the financial institutions shall be determined by the method
11 used for filing the summary of deposits report with the Federal Deposit Insurance
12 Corporation. The accounting method used to allocate deposits for completion of the
13 summary of deposits shall be the same as has been utilized in prior periods. Any
14 deviation from prior accounting methods may only be adopted with the permission
15 of the department~~[cabinet]~~.

16 (3) By August 15, 1997, and annually thereafter, each financial institution shall file
17 with the department~~[cabinet]~~, on a form prescribed by the department~~[cabinet]~~, a
18 report of all deposits located within this Commonwealth as of the preceding June
19 30, along with a copy of the most recent summary of deposits filed with the Federal
20 Deposit Insurance Corporation. The department~~[cabinet]~~ shall review the report and
21 certify to the local jurisdictions that have enacted the franchise tax by October 1 of
22 each year the amount of deposits within the jurisdiction and amount of the tax due.
23 The local taxing authority shall issue bills to the financial institution by December 1
24 and require payment, with a two percent (2%) discount by December 31, or without
25 discount by January 31 of the next year.

26 (4) For calendar year 1996 only, each financial institution shall file with the
27 department~~[cabinet]~~ on or before September 15, 1996, a report of all deposits

1 located within this Commonwealth as of June 30, 1996, along with a copy of the
 2 most recent summary of deposits filed with the Federal Deposit Insurance
 3 Corporation. The department~~[cabinet]~~ shall review the report after being given
 4 notice by the local jurisdiction that the tax under this section was enacted during
 5 1996, and shall certify to the local jurisdiction the amount of deposits within the
 6 jurisdiction and the amount of tax due by March 1, 1997. The local taxing authority
 7 shall issue bills to the financial institution by May 1, 1997, and require payment
 8 with a two percent (2%) discount by May 31, 1997, or without discount by June 30,
 9 1997.

- 10 (5) The local jurisdiction shall notify the department~~[cabinet]~~ of the tax rate imposed
 11 upon the enactment of the tax. The local jurisdiction shall also notify the
 12 department~~[cabinet]~~ of any subsequent rate changes.

13 Section 338. KRS 136.980 is amended to read as follows:

14 If any tax imposed by KRS 136.330 to 136.395, 299.530 and 304.4-030, whether assessed
 15 by the department~~[cabinet]~~, or the taxpayer, or any installment or portion of any tax is not
 16 paid on or before the date prescribed for its payment, there shall be collected interest upon
 17 the unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date
 18 prescribed for its payment until payment is actually made to the department~~[cabinet]~~.

19 Section 339. KRS 136.990 is amended to read as follows:

- 20 (1) Any corporation that fails to pay its taxes, penalty, and interest as provided in
 21 subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty
 22 dollars (\$50) for each day the same remains unpaid, to be recovered by indictment
 23 or civil action, of which the Franklin Circuit Court shall have jurisdiction.

- 24 (2) Any public service corporation, or officer thereof, that willfully fails or refuses to
 25 make reports as required by KRS 136.130 and 136.140 shall be fined one thousand
 26 dollars (\$1,000), and fifty dollars (\$50) for each day the reports are not made after
 27 April 30 of each year.

- 1 (3) Any superintendent of schools or county clerk who fails to report as required by
2 KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars
3 (\$50) nor more than one hundred dollars (\$100) for each offense.
- 4 (4) Any company or association that fails or refuses to return the statement or pay the
5 taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars
6 (\$1,000) for each offense.
- 7 (5) Any insurance company that fails or refuses for thirty (30) days to return the
8 statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS
9 136.330 or 136.340, shall forfeit one hundred dollars (\$100) for each offense. The
10 commissioner of insurance shall revoke the authority of the company or its agents to
11 do business in this state, and shall publish the revocation pursuant to KRS Chapter
12 424.
- 13 (6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than
14 one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each
15 offense.
- 16 (7) Where no other penalty is mentioned for failing to do an act required, or for doing
17 an act forbidden by this chapter, the penalty shall be not less than ten dollars (\$10)
18 nor more than five hundred dollars (\$500).
- 19 (8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under
20 subsections (4) to (6) of this section.
- 21 (9) Any person who violates any of the provisions of KRS 136.073 or KRS 136.090
22 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
- 23 (10) If the tax imposed by KRS 136.070 or KRS 136.073, whether assessed by the
24 department~~department~~ or the taxpayer, or any installment or portion of the tax, is not
25 paid on or before the date prescribed for its payment, interest shall be collected
26 upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from
27 the date prescribed for its payment until payment is actually made to the

1 department~~{cabinet}~~.

2 Section 340. KRS 137.130 is amended to read as follows:

- 3 (1) Every person engaged in the transportation of crude petroleum in this state from
 4 receptacles located at the place of production in this state shall be considered a
 5 transporter of crude petroleum. Every transporter of crude petroleum shall make a
 6 verified report to the Department of Revenue~~{Cabinet}~~ by the twentieth day of the
 7 month succeeding each month in which crude petroleum is so received for
 8 transportation, showing the quantity of each kind or quality of crude petroleum so
 9 received from each county in this state and the market value of the crude petroleum
 10 on the first business day after the tenth day of the month in which the report is
 11 made. The report shall show any sales of crude petroleum so received, the quantity
 12 of crude petroleum in each sale, the date of each sale, and the market price of the
 13 crude petroleum on each date of sale for the preceding month. This report shall be
 14 made upon blanks furnished and prescribed by the department~~{cabinet}~~. The
 15 department~~{cabinet}~~ may require additional reports from time to time, on blanks
 16 prepared by it, from all producers and transporters of crude petroleum.
- 17 (2) Every person required to report under subsection (1) of this section shall register as
 18 a transporter of crude petroleum in the office of the county clerk in each county in
 19 which such business is carried on by him, in a book which the department~~{cabinet}~~
 20 shall provide, showing the name, residence and place of business of the transporter.
 21 The county clerk shall immediately certify to the department~~{cabinet}~~ a copy of
 22 each registration as made.

23 Section 341. KRS 137.140 is amended to read as follows:

24 Every transporter of crude petroleum shall be liable for the taxes imposed under KRS
 25 137.120 on all crude petroleum received by him. He shall collect from the producer, in
 26 money or crude petroleum, the taxes imposed. If collection is in crude petroleum, the
 27 transporter may sell the same and pay the taxes by check or cash to the Department of

1 Revenue~~[Cabinet]~~ or sheriff, as provided in KRS 137.150 and 137.160.

2 Section 342. KRS 137.150 is amended to read as follows:

3 Any county imposing a tax under KRS 137.120 shall immediately after the levy of the tax
 4 give notice thereof to each transporter of crude petroleum registered in the county. The
 5 transporter shall, after the first day of the month immediately following such notice,
 6 proceed as provided in KRS 137.140 to collect the county tax and pay it to the sheriff of
 7 the county in the manner and at the time payment of such taxes is required to be made to
 8 the Department of Revenue~~[Cabinet]~~. Each county imposing the tax shall, upon the
 9 fixing of the levy, certify the same to the department~~[cabinet]~~, which shall make the
 10 assessment for the county tax in the same manner and at the same value as provided for
 11 the state tax, which shall be certified to the county for collection.

12 Section 343. KRS 137.160 is amended to read as follows:

- 13 (1) When the Department of Revenue~~[Cabinet]~~ has received the reports provided for
 14 in KRS 137.130, it shall, upon such reports and such other reports and information
 15 as it may secure, assess the value of all grades or kinds of crude petroleum reported
 16 for each month.
- 17 (2) Where the report shows no sale of crude petroleum during the month covered by the
 18 report, the market value of crude petroleum on the first business day after the tenth
 19 day of the month in which the report is made shall be fixed by the
 20 department~~[cabinet]~~ as the assessed value of all crude petroleum covered by the
 21 report. Where the report shows that all crude petroleum reported has been sold
 22 during the month covered by the report, the market price of such crude petroleum
 23 on each day of sale shall be the assessed value of all crude petroleum sold on that
 24 date of sale, and the total amount of the tax to be reported as the assessment on the
 25 report shall be the total of the assessments made on such sales. If the report shows
 26 that part of the crude petroleum reported has been sold and part remains unsold, the
 27 market price of the crude petroleum on the first business day after the tenth day of

1 the month following the month covered by the report shall be fixed as the assessed
 2 value of the portion of the crude petroleum unsold, the market price of the crude
 3 petroleum on each day of sale shall be the assessed value of the portion sold, and
 4 the total amount of the tax to be reported as the assessment on the report shall be the
 5 total of the assessments made on the sold and unsold crude petroleum. The
 6 department~~[cabinet]~~, in making its assessments, shall take into consideration
 7 transportation charges.

- 8 (3) The department~~[cabinet]~~ shall, by the last day of the month in which the reports are
 9 required to be made, notify each transporter of his assessment, and certify the
 10 assessment to the county clerk of each county that has reported the levy of a county
 11 tax under KRS 137.150. The county clerk shall immediately deliver a copy thereof
 12 to the sheriff for collection of the county tax. The transporter so notified of the
 13 assessment shall have the right to an appeal to the Kentucky board of tax appeals.

14 Section 344. KRS 137.180 is amended to read as follows:

- 15 (1) Each person engaged in the business of conducting a race track shall, on or before
 16 thirty (30) days following the close of each duly licensed race meeting, furnish the
 17 Department of Revenue~~[Cabinet]~~ a verified report of the number of days on which
 18 races were conducted on that race track during the race meeting, together with a
 19 statement of its daily mutuel handle for each day during the meeting, and at the
 20 same time pay to the state the tentatively correct amount of the license tax
 21 apparently due it pursuant to KRS 137.170.
- 22 (2) On or before December 31 in each year, each person engaged in the business of
 23 conducting a race track shall file a final report with the Department of Revenue~~[Cabinet]~~
 24 ~~Cabinet]~~ giving in summary form a recapitulation of the information furnished by
 25 the previous tentative reports filed during the year, computing the final license tax
 26 due the state for the year ending November 30 and showing the amount of tentative
 27 license tax actually paid during the year. Any balance of license tax due the state as

1 shown on the final report shall be paid at the same time as the filing. Any
 2 overpayment in license tax disclosed by the final report shall, at the option of the
 3 taxpayer, be promptly refunded by the state or credited against the license tax to be
 4 due from the taxpayer in the following year.

- 5 (3) Any person who violates any provision of this section or KRS 137.170 shall be
 6 subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest
 7 at the tax interest rate as defined in KRS 131.010(6) upon the unpaid amount from
 8 the date prescribed for its payment until payment is actually made to the
 9 department~~cabinet~~.

10 Section 345. KRS 137.990 is amended to read as follows:

- 11 (1) (a) Any person who engages in any business or sells or offers to sell or has on
 12 hand for the purpose of sale any article or exercises any privilege for which a
 13 license is required or imposed by KRS 137.115 before procuring the license
 14 and paying the tax shall be fined not less than twenty-five dollars (\$25) nor
 15 more than two hundred dollars (\$200) for each offense, unless otherwise
 16 specifically provided;
- 17 (b) Any county clerk who violates any of the provisions of KRS 137.115, or any
 18 administrative regulation promulgated by the Department of Revenue~~Cabinet~~
 19 thereunder, shall be fined not less than fifty dollars (\$50) nor more
 20 than one thousand dollars (\$1,000) for each offense; and
- 21 (c) Any person who makes a false statement in securing a license under KRS
 22 137.115 shall be deemed guilty of a misdemeanor.
- 23 (2) (a) Any person who violates any provision of KRS 137.120 to 137.160 shall be
 24 subject to the uniform civil penalties imposed pursuant to KRS 131.180; and
- 25 (b) Any person who violates any of the provisions of KRS 137.120 to 137.160
 26 may be fined not less than one hundred dollars (\$100) nor more than five
 27 hundred dollars (\$500) or imprisoned for not less than thirty (30) days nor

1 more than six (6) months, or both.

2 (3) Any person who violates any of the provisions of KRS 137.170 or 137.180 shall be
3 fined not more than one thousand dollars (\$1,000) or imprisoned in the county jail
4 not more than thirty (30) days, or both so fined and imprisoned. If the offender is a
5 corporation, the principal officer or the officer or employee directly responsible for
6 the violation, or both, shall be punished as provided in this subsection.

7 Section 346. KRS 138.130 is amended to read as follows:

8 As used in KRS 138.130 to 138.205, unless the context requires otherwise:

- 9 (1) "Department"~~["Cabinet"]~~ means the Department of Revenue~~["Cabinet"]~~.
- 10 (2) "Manufacturer" means any person who manufactures or produces cigarettes within
11 or without this state.
- 12 (3) "Retailer" means any person who sells to a consumer or to any person for any
13 purpose other than resale.
- 14 (4) "Sale at retail" shall mean a sale to any person for any other purpose other than
15 resale.
- 16 (5) "Cigarettes" shall mean and include any roll for smoking made wholly or in part of
17 tobacco, or any substitute for tobacco, irrespective of size or shape and whether or
18 not such tobacco is flavored, adulterated or mixed with any other ingredient, the
19 wrapper or cover of which is made of paper or any other substance or material,
20 excepting tobacco.
- 21 (6) "Sale" or "sell" shall mean any transfer for a consideration, exchange, barter, gift,
22 offer for sale, advertising for sale, soliciting an order for cigarettes, and distribution
23 in any manner or by any means whatsoever.
- 24 (7) "Tax evidence" shall mean and include any stamps, metered impressions or other
25 indicia prescribed by the department~~["cabinet"]~~ by regulation as a means of denoting
26 the payment of tax.
- 27 (8) "Person" shall mean and include any individual, firm, copartnership, joint venture,

- 1 association, municipal or private corporation whether organized for profit or not,
 2 Commonwealth of Kentucky or any of its political subdivisions, estate, trust or any
 3 other group or combination acting as a unit, and the plural as well as the singular.
- 4 (9) "Resident wholesaler" shall mean any person who purchases at least seventy-five
 5 percent (75%) of all cigarettes purchased by him directly from the cigarette
 6 manufacturer on which the cigarette tax provided for in KRS 138.130 to 138.205 is
 7 unpaid, and who maintains an established place of business in this state where he
 8 attaches cigarette tax evidence, or receives untaxed cigarettes.
- 9 (10) "Nonresident wholesaler" shall mean any person who purchases cigarettes directly
 10 from the manufacturer and maintains a permanent location or locations outside this
 11 state where Kentucky cigarette tax evidence is attached or from where Kentucky
 12 cigarette tax is reported and paid.
- 13 (11) "Sub-jobber" shall mean any person who purchases cigarettes from a wholesaler
 14 licensed under KRS 138.195 on which the Kentucky cigarette tax has been paid and
 15 makes them available to retailers for resale. No person shall be deemed to make
 16 cigarettes available to retailers for resale unless such person certifies and establishes
 17 to the satisfaction of the department~~cabinet~~ that firm arrangements have been
 18 made to regularly supply at least five (5) retail locations with Kentucky tax-paid
 19 cigarettes for resale in the regular course of business.
- 20 (12) "Vending machine operator" shall mean any person who operates one (1) or more
 21 cigarette vending machines.
- 22 (13) "Transporter" shall mean any person transporting untax-paid cigarettes obtained
 23 from any source to any destination within this state, other than cigarettes transported
 24 by the manufacturer thereof.
- 25 (14) "Unclassified acquirer" shall mean any person in this state who acquires cigarettes
 26 from any source on which the Kentucky cigarette tax has not been paid, and who is
 27 not a person otherwise required to be licensed under the provisions of KRS

1 138.195.

2 Section 347. KRS 138.146 is amended to read as follows:

- 3 (1) The cigarette tax imposed by KRS 138.130 to 138.205 shall be due when any
4 licensed wholesaler or unclassified acquirer takes possession within this state of
5 untax-paid cigarettes.
- 6 (2) The tax shall be paid by the purchase of stamps by a resident wholesaler within
7 forty-eight (48) hours after the cigarettes are received by him. A stamp shall be
8 affixed to each package of an aggregate denomination not less than the amount of
9 the tax upon the contents thereof. The stamp, so affixed, shall be prima facie
10 evidence of payment of tax. Unless such stamps have been previously affixed, they
11 shall be so affixed by each resident wholesaler prior to the delivery of any cigarettes
12 to a retail location or any person in this state. The evidence of tax payment shall be
13 affixed to each individual package of cigarettes by a nonresident wholesaler prior to
14 the introduction or importation of the cigarettes into the territorial limits of this
15 state. The evidence of tax payment shall be affixed by an unclassified acquirer
16 within twenty-four (24) hours after the cigarettes are received by him.
- 17 (3) The department~~[cabinet]~~ shall by regulation prescribe the form of cigarette tax
18 evidence, the method and manner of the sale and distribution of such cigarette tax
19 evidence, and the method and manner that such evidence shall be affixed to the
20 cigarettes. All cigarette tax evidence prescribed by the department~~[cabinet]~~ shall be
21 designed and furnished in a fashion to permit identification of the person that
22 affixed the cigarette tax evidence to the particular package of cigarettes, by means
23 of numerical rolls or other mark on the cigarette tax evidence. The
24 department~~[cabinet]~~ shall maintain for at least three (3) years information
25 identifying the person that affixed the cigarette tax evidence to each package of
26 cigarettes. This information shall not be kept confidential or exempt from disclosure
27 to the public through open records.

- 1 (4) Units of cigarette tax evidence shall be sold at their face value, but the
 2 department~~{cabinet}~~ shall allow as compensation to any licensed wholesaler an
 3 amount of tax evidence equal to thirty cents (\$0.30) face value for each three dollars
 4 (\$3) of tax evidence purchased at face value. The department~~{cabinet}~~ shall have
 5 the power to withhold compensation from any licensed wholesaler for failure to
 6 abide by any provisions of KRS 138.130 to 138.205 or any regulations promulgated
 7 thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced
 8 by the amount allowed as compensation at the time of purchase.
- 9 (5) No tax evidence may be affixed, or used in any way, by any person other than the
 10 person purchasing such evidence from the department~~{cabinet}~~. Such tax evidence
 11 may not be transferred or negotiated, and may not, by any scheme or device, be
 12 given, bartered, sold, traded, or loaned to any other person. Unaffixed tax evidence
 13 may be returned to the department~~{cabinet}~~ for credit or refund for any reason
 14 satisfactory to the department~~{cabinet}~~.
- 15 (6) In the event any retailer shall receive into his possession cigarettes to which
 16 evidence of Kentucky tax payment is not properly affixed, he shall within twenty-
 17 four (24) hours notify the department~~{cabinet}~~ of such fact. Such notice shall be in
 18 writing, and shall give the name of the person from whom such cigarettes were
 19 received, and the quantity of such cigarettes, and such written notice may be given
 20 to any field agent of the department~~{cabinet}~~. The written notice may also be
 21 directed to the commissioner of the Department of Revenue~~{secretary of revenue}~~,
 22 Frankfort, Kentucky. If such notice is given by means of the United States mail, it
 23 shall be sent by certified mail. Any such cigarettes shall be retained by such retailer,
 24 and not sold, for a period of fifteen (15) days after giving the notice provided in this
 25 subsection. The retailer may, at his option, pay the tax due on any such cigarettes
 26 according to rules and regulations to be prescribed by the department~~{cabinet}~~, and
 27 proceed to sell the same after such payment.

1 (7) Cigarettes stamped with the cigarette tax evidence of another state shall at no time
 2 be commingled with cigarettes on which the Kentucky cigarette tax evidence has
 3 been affixed, but any licensed wholesaler, licensed sub-jobber, or licensed vending
 4 machine operator may hold cigarettes stamped with the tax evidence of another
 5 state for any period of time, subsection (2) of this section notwithstanding.

6 Section 348. KRS 138.155 is amended to read as follows:

7 In lieu of the affixing of cigarette tax evidence to individual packages of cigarettes as the
 8 means of denoting payment of the cigarette tax imposed by KRS 138.130 to 138.205, the
 9 department~~cabinet~~ may prescribe, by rules and regulations sufficient to protect the
 10 revenue of this state, a method of reporting, payment and collection of such tax, without
 11 the affixing of tax evidence to individual packages of cigarettes. In the event such a
 12 system is adopted no compensation for reporting for the purpose of such tax in excess of
 13 two percent (2%) of the tax due shall be allowed to any person.

14 Section 349. KRS 138.165 is amended to read as follows:

15 (1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-
 16 paid cigarettes held, owned, possessed, or in control of any person other than as
 17 provided in KRS 138.130 to 138.205 are contraband and subject to seizure and
 18 forfeiture as set out in this section.

19 (2) Whenever any peace officer of this state, or any representative of the
 20 department~~cabinet~~, finds any untax-paid cigarettes within the borders of this state
 21 in the possession of any person other than a licensee authorized to possess untax-
 22 paid cigarettes by the provisions of KRS 138.130 to 138.205, such cigarettes shall
 23 be immediately seized and stored in a depository to be selected by the officer or
 24 agent. At the time of seizure, the officer or agent shall deliver to the person in
 25 whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall
 26 state on its face that any inquiry concerning any goods seized shall be directed to the
 27 commissioner of the Department of Revenue~~secretary of revenue~~, Frankfort,

1 Kentucky. Immediately upon seizure, the officer or agent shall notify the
 2 commissioner of the Department of Revenue~~[secretary of revenue]~~ of the nature
 3 and quantity of the goods seized. Any seized goods shall be held for a period of
 4 twenty (20) days and if after such period no person has claimed the cigarettes as his
 5 property, the commissioner~~[secretary]~~ shall cause the same to be exposed to public
 6 sale to any person authorized to purchase untax-paid cigarettes. The sale shall be on
 7 notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale,
 8 from the sale shall be paid into the Kentucky State Treasury for general fund
 9 purposes.

10 (3) It is declared to be the legislative intent that any vending machine used for
 11 dispensing cigarettes on which Kentucky cigarette tax has not been paid is
 12 contraband and subject to seizure and forfeiture. In the event any peace officer or
 13 agent of the department~~[cabinet]~~ finds any vending machine within the borders of
 14 this state dispensing untax-paid cigarettes, he shall immediately seize the vending
 15 machine and store the same in a safe place selected by him. He shall thereafter
 16 proceed as provided in subsection (2) of this section and the commissioner of the
 17 Department of Revenue~~[secretary of revenue]~~ shall cause the vending machine to
 18 be sold, and the proceeds applied, as set out in subsection (2) of this section.

19 (4) No cigarettes, on which the tax imposed by KRS 138.130 to 138.205 has not been
 20 paid, shall be transported within this state by any person other than a manufacturer
 21 or a person licensed under the provisions of KRS 138.195. It is declared to be the
 22 legislative intent that any motor vehicle used to transport any such cigarettes by
 23 other persons is contraband and subject to seizure and forfeiture. In the event any
 24 peace officer or agent of the department~~[cabinet]~~ finds any such motor vehicle, he
 25 shall immediately seize the motor vehicle and store it in a safe place specified by
 26 him. He shall thereafter proceed as provided in subsection (2) of this section and the
 27 commissioner of the Department of Revenue~~[secretary of revenue]~~ shall cause the

1 motor vehicle to be sold, and the proceeds applied, as set out in subsection (2) of
2 this section.

3 (5) The owner or any person having an interest in any goods, machines or vehicles
4 seized as provided under subsections (1) to (4) of this section may apply to the
5 commissioner of the Department of Revenue~~[secretary of revenue]~~ for remission
6 of the forfeiture for good cause shown. If it is shown to the satisfaction of the
7 Department of Revenue~~[Cabinet]~~ that the owner was without fault in the
8 possession, dispensing or transportation of the untax-paid cigarettes, he shall remit
9 the forfeiture. In the event he determines that the possession, dispensing or
10 transportation of untax-paid cigarettes was willful or intentional he may
11 nevertheless remit the forfeiture on condition that the owner pay a penalty to be
12 prescribed by him of not more than fifty percent (50%) of the value of the thing
13 forfeited. All taxes due on untax-paid cigarettes shall be paid in addition to the
14 penalty, if any.

15 (6) Any party aggrieved by an order entered hereunder may appeal to the Kentucky
16 Board of Tax Appeals in the manner provided by law.

17 Section 350. KRS 138.195 is amended to read as follows:

18 (1) No person other than a manufacturer shall acquire cigarettes in this state on which
19 the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler,
20 nonresident wholesaler, vending machine operator, sub-jobber, transporter or
21 unclassified acquirer of such cigarettes without first obtaining a license from the
22 department~~[cabinet]~~ as set out in this section.

23 (2) Each resident wholesaler shall secure a separate license for each place of business at
24 which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky
25 cigarette tax has not been paid are received. Each nonresident wholesaler shall
26 secure a separate license for each place of business at which evidence of Kentucky
27 cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.

1 Such a license or licenses shall be secured on or before July 1 of each year, and each
2 licensee shall pay the sum of five hundred dollars (\$500) for each such year or
3 portion thereof for which such license is secured.

4 (3) Each sub-jobber shall secure a separate license for each place of business from
5 which Kentucky tax-paid cigarettes are made available to retailers, whether such
6 place of business is located within or without this state. Such license or licenses
7 shall be secured on or before July 1 of each year, and each licensee shall pay the
8 sum of five hundred dollars (\$500) for each such year or portion thereof for which
9 such license is secured.

10 (4) Each vending machine operator shall secure a license for the privilege of dispensing
11 Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on
12 or before July 1 of each year, and each licensee shall pay the sum of twenty-five
13 dollars (\$25) for each year or portion thereof for which such license is secured. No
14 vending machine shall be operated within this Commonwealth without having
15 prominently affixed thereto the name of its operator, together with the license
16 number assigned to such operator by the department~~[cabinet]~~. The
17 department~~[cabinet]~~ shall prescribe by regulation the manner in which the
18 information shall be affixed to the vending machine.

19 (5) Each transporter shall secure a license for the privilege of transporting cigarettes
20 within this state. Such license shall be secured on or before July 1 of each year, and
21 each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion
22 thereof for which such license is secured. No transporter shall transport any
23 cigarettes without having in actual possession an invoice or bill of lading therefor,
24 showing the name and address of the consignor and consignee, the date acquired by
25 the transporter, the name and address of the transporter, the quantity of cigarettes
26 being transported, together with the license number assigned to such transporter by
27 the department~~[cabinet]~~.

- 1 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
 2 cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall
 3 be secured on or before July 1 of each year, and each licensee shall pay the sum of
 4 fifty dollars (\$50) for each such year or portion thereof for which such license is
 5 secured.
- 6 (7) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the
 7 department~~[cabinet]~~ from requiring a person to purchase more than one (1) license
 8 if the nature of such person's business is so diversified as to justify such
 9 requirement.
- 10 (8) The department~~[cabinet]~~ may by regulation require any person licensed under the
 11 provisions of this section to supply such information concerning his business, sales
 12 or any privilege exercised, as is deemed reasonably necessary for the regulation of
 13 such licensees, and to protect the revenues of the state. Failure on the part of such
 14 licensee to comply with the provisions of KRS 138.130 to 138.205 or any
 15 regulations promulgated thereunder, or to permit an inspection of premises,
 16 machines or vehicles by an authorized agent of the department~~[cabinet]~~ at any
 17 reasonable time shall be grounds for the revocation of any license issued by the
 18 department~~[cabinet]~~, after due notice and a hearing by the department~~[cabinet]~~.
 19 The commissioner of the Department of Revenue~~[secretary of revenue]~~ may assign
 20 a time and place for such hearing and may appoint a conferee who shall conduct a
 21 hearing, receive evidence and hear arguments. Such conferee shall thereupon file a
 22 report with the commissioner~~[secretary]~~ together with a recommendation as to the
 23 revocation of such license. From any revocation made by the commissioner of the
 24 Department of Revenue~~[secretary of revenue]~~ on such report, the licensee may
 25 prosecute an appeal to the Kentucky Board of Tax Appeals as provided by law. Any
 26 person whose license has been revoked for the willful violation of any provision of
 27 KRS 138.130 to 138.205 shall not be entitled to any license provided for in this

section, or have any interest in any such license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of one (1) year after such revocation.

(9) No license issued pursuant to the provisions of this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.

(10) Every manufacturer located or doing business in this state shall keep written records of all shipments of cigarettes to persons within this state, and shall submit reports of such shipments as the department~~{cabinet}~~ may require by regulation.

(11) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.

Section 351. KRS 138.205 is amended to read as follows:

(1) Any licensee under KRS 138.195 who violates any provision of KRS 138.130 to 138.205, or any administrative regulation promulgated under them, shall become indebted to the Commonwealth in the sum of five hundred dollars (\$500) for each violation. The civil penalty may be collected by action in the Franklin Circuit Court.

(2) Any manufacturer who fails to keep written records, and submit reports to the department~~{cabinet}~~, as required by the provisions of subsection (10) of KRS 138.195, shall become indebted to the Commonwealth in the sum of one thousand dollars (\$1,000) for each violation. The penalty may be enforced by action of the Franklin Circuit Court.

(3) Any manufacturer doing business within this state without having complied with the provisions of KRS Chapter 271B as to designation of process agent shall, by so doing of business, be deemed to have made the Secretary of State its agent for the service of process in any civil action instituted in the Franklin Circuit Court for the recovery of the penalty. In any action, the complaint shall set forth the post office

1 address of the home office of the manufacturer.

2 (4) Any nonresident person licensed under the provisions of KRS 138.195 shall, at the
3 time of application for license, designate some resident of this state as a process
4 agent for the purpose of service of civil process in any civil action originating in any
5 court of this Commonwealth, and service upon the person so designated shall be
6 sufficient to bring the nonresident person before any court of this Commonwealth
7 for all purposes.

8 (5) Any person acting in the capacity of a licensee under the provisions of KRS
9 138.130 to 138.205 without having secured a license as provided in KRS 138.195
10 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180 and
11 interest at the tax interest rate as defined in KRS 131.010(6) from the date due until
12 the date of payment.

13 Section 352. KRS 138.207 is amended to read as follows:

14 The Department of Revenue~~[Cabinet]~~ may by regulation refund or waive the cigarette
15 tax imposed by the provisions of this chapter on any cigarettes donated to hospitals or
16 other eleemosynary institutions for the benefit of, or for the use of, patients or inmates of
17 such institutions. The department~~[cabinet]~~ shall also prescribe the method by which
18 cigarettes donated shall be transferred to any such institutions.

19 Section 353. KRS 138.210 is amended to read as follows:

20 As used in KRS 138.220 to 138.446, unless the context requires otherwise:

21 (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel
22 through wrecking of transportation conveyance, explosion, fire, flood or other
23 casualty loss, or contaminated and returned to storage. The loss shall be reported
24 within thirty (30) days after discovery of the loss to the department~~[cabinet]~~ in a
25 manner and form prescribed by the department~~[cabinet]~~, supported by proper
26 evidence which in the sole judgment of the department~~[cabinet]~~ substantiates the
27 alleged loss or contamination and which is confirmed in writing to the reporting

dealer by the department~~[cabinet]~~. The department~~[cabinet]~~ may make any investigation deemed necessary to establish the bona fide claim of the loss;

(2) "Gasoline dealer" or "special fuels dealer" means any person who is:

(a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;

(b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;

(c) Distributing gasoline from bulk storage in this state;

(d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arm's-length transactions;

(e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the department~~[cabinet]~~, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or

(f) Regularly exporting gasoline or special fuels;

(3) "Department"~~["Cabinet"]~~ means the Department of Revenue~~[Cabinet]~~;

(4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner approved by the United

1 States Bureau of Mines, are prima facie commercially usable in internal
2 combustion engines. The term "gasoline" as used herein shall include casing
3 head, absorption, natural gasoline, and condensates when used without
4 blending as a motor fuel, sold for use in motors direct, or sold to those who
5 blend for their own use, but shall not include: propane, butane, or other
6 liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel,
7 crude oil or casing head, absorption, natural gasoline and condensates when
8 sold to be blended or compounded with other less volatile liquids in the
9 manufacture of commercial gasoline for motor fuel, industrial naphthas,
10 rubber solvents, Stoddard solvent, mineral spirits, VM and P & naphthas,
11 turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine,
12 xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which
13 would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit
14 and a pressure of 14.7 pounds per square inch absolute, unless the products
15 are used wholly or in combination with gasoline as a motor fuel;

16 (b) "Special fuels" means and includes all combustible gases and liquids capable
17 of being used for the generation of power in an internal combustion engine to
18 propel vehicles of any kind upon the public highways, including diesel fuel,
19 and dyed diesel fuel used exclusively for nonhighway purposes in off-highway
20 equipment and in nonlicensed motor vehicles, except that it does not include
21 gasoline, aviation jet fuel, kerosene unless used wholly or in combination with
22 special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS
23 234.100;

24 (c) "Diesel fuel" means any liquid other than gasoline that, without further
25 processing or blending, is suitable for use as a fuel in a diesel powered
26 highway vehicle. Diesel fuel does not include unblended kerosene, No. 5, and
27 No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval

1 Distillate MILL-F-166884;

2 (d) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United
3 States Environmental Protection Agency rules for high sulfur diesel fuel, or is
4 dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant
5 to any other requirements subsequently set by the United States
6 Environmental Protection Agency or the Internal Revenue Service;

7 (5) "Received" or "received gasoline" or "received special fuels" shall have the
8 following meanings:

9 (a) Gasoline and special fuels produced, manufactured, or compounded at any
10 refinery in this state or acquired by any dealer and delivered into or stored in
11 refinery, marine, or pipeline terminal storage facilities in this state shall be
12 deemed to be received when it has been loaded for bulk delivery into tank cars
13 or tank trucks consigned to destinations within this state. For the purpose of
14 the proper administration of this chapter and to prevent the evasion of the tax
15 and to enforce the duty of the dealer to collect the tax, it shall be presumed
16 that all gasoline and special fuel loaded by any licensed dealer within this state
17 into tank cars or tank trucks is consigned to destinations within this state,
18 unless the contrary is established by the dealer, pursuant to rules and
19 regulations prescribed by the cabinet; and

20 (b) Gasoline and special fuel acquired by any dealer in this state, and not
21 delivered into refinery, marine, or pipeline terminal storage facilities, shall be
22 deemed to be received when it has been placed into storage tanks or other
23 containers for use or subject to withdrawal for use, delivery, sale, or other
24 distribution. Dealers may sell gasoline or special fuel to licensed bonded
25 dealers in this state in transport truckload, carload, or cargo lots, withdrawing
26 it from refinery, marine, pipeline terminal, or bulk storage tanks, without
27 paying the tax. In such instances, the licensed bonded dealer purchasing the

1 gasoline or special fuel shall be deemed to have received such fuel at the time
 2 of withdrawal from the seller's storage facility and shall be responsible to the
 3 state for the payment of the tax thereon;

4 (6) "Refinery" means any place where gasoline or special fuel is refined, manufactured,
 5 compounded, or otherwise prepared for use;

6 (7) "Storage" means all gasoline and special fuel produced, refined, distilled,
 7 manufactured, blended, or compounded and stored at a refinery storage or delivered
 8 by boat at a marine terminal for storage, or delivered by pipeline at a pipeline
 9 terminal, delivery station, or tank farm for storage;

10 (8) "Transporter" means any person who transports gasoline or special fuel on which
 11 the tax has not been paid or assumed;

12 (9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less
 13 than twenty thousand (20,000) gallons owned or operated at one (1) location by a
 14 single owner or operator for the purpose of storing gasoline or special fuel for resale
 15 or delivery to retail outlets or consumers;

16 (10) "Average wholesale price" shall mean:

17 (a) The weighted average per gallon wholesale tank wagon price of gasoline,
 18 exclusive of the nine cents (\$0.09) per gallon federal tax in effect on January
 19 1, 1984, any increase in the federal gasoline tax after July 1, 1984, and any fee
 20 on imported oil imposed by the Congress of the United States after July 1,
 21 1986, as determined by the Department of Revenue~~{Cabinet}~~ from
 22 information furnished by licensed gasoline dealers or from information
 23 available through independent statistical surveys of gasoline prices. Dealers
 24 shall furnish within twenty (20) days following the end of the first month of
 25 each calendar quarter, the information regarding wholesale selling prices for
 26 the previous month required by the department~~{cabinet}~~;

27 (b) Notwithstanding the provisions of paragraph (a) of this subsection, for

1 purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no
2 case shall "average wholesale price" be deemed to be less than one dollar and
3 eleven cents (\$1.11) per gallon, and in no case shall "average wholesale price"
4 be deemed to be more than one dollar and fifty cents (\$1.50) per gallon on or
5 before June 30, 1982. In fiscal year 1982-83, the "average wholesale price"
6 shall not be deemed to increase more than ten percent (10%) over the "average
7 wholesale price" at the close of fiscal year 1981-82; in each subsequent fiscal
8 year the "average wholesale price" shall not be deemed to increase more than
9 ten percent (10%) over the "average wholesale price" at the close of the
10 previous fiscal year;

11 (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled
12 by an internal combustion engine and licensed for operation and operated upon the
13 public highways and any trailer or semitrailer attached to or having its front end
14 supported by the motor vehicles;

15 (12) "Public highways" means every way or place generally open to the use of the public
16 as a matter of right for the purpose of vehicular travel, notwithstanding that they
17 may be temporarily closed or travel thereon restricted for the purpose of
18 construction, maintenance, repair, or reconstruction;

19 (13) "Agricultural purposes" means purposes directly related to the production of
20 agricultural commodities and the conducting of ordinary activities on the farm;

21 (14) "Retail filling station" means any place accessible to general public vehicular traffic
22 where gasoline or special fuel is or may be placed into the fuel supply tank of a
23 licensed motor vehicle; and

24 (15) "Financial instrument" means a bond issued by a corporation authorized to do
25 business in Kentucky, a line of credit, or an account with a financial institution
26 maintaining a compensating balance.

27 Section 354. KRS 138.220 is amended to read as follows:

- 1 (1) An excise tax at the rate of nine percent (9%) of the average wholesale price
2 rounded to the third decimal when computed on a per gallon basis shall be paid on
3 all gasoline and special fuel received in this state. Except as provided by KRS
4 Chapter 138, no other excise or license tax shall be levied or assessed on gasoline or
5 special fuel by the state or any political subdivision of the state. The tax herein
6 imposed shall be paid by the dealer receiving the gasoline or special fuel to the State
7 Treasurer in the manner and within the time specified in KRS 138.230 to 138.340
8 and all such tax may be added to the selling price charged by the dealer or other
9 person paying the tax on gasoline or special fuel sold in this state. Nothing herein
10 contained shall authorize or require the collection of the tax upon any gasoline or
11 special fuel after it has been once taxed under the provisions of this section, unless
12 such tax was refunded or credited.
- 13 (2) In addition to the excise tax provided in subsection (1) of this section, there is
14 hereby levied a supplemental highway user motor fuel tax to be paid in the same
15 manner and at the same time as the tax provided in subsection (1) of this section.
16 Such tax shall be calculated, starting with the quarter beginning July 1, 1986, by
17 taking the excise tax resulting from the calculation provided for in subsection (1) of
18 this section and adjusting such tax calculated, for each quarter, to reflect decreases
19 in the average wholesale price, as defined in KRS 138.210(10)(a). The adjustment
20 shall be made by calculating the difference between the average wholesale price
21 computed for the quarter beginning October 1, 1985, as provided for in subsection
22 (3) of this section, and the average wholesale price computed for the quarter
23 beginning July 1, 1986 and each succeeding quarter, as provided for in subsection
24 (3) of this section. In the event of a decrease in the average wholesale price
25 computed for the quarter beginning October 1, 1985, and ending December 31,
26 1985, and the average wholesale price computed for the quarter beginning July 1,
27 1986, and each succeeding quarter, the excise tax shall be adjusted upward for that

1 quarter. The upward adjustment shall equal one-half (1/2) of the decrease between
 2 the two (2) quarterly periods, rounded to the third decimal. In no case shall the
 3 adjustment provided by this subsection result in a supplemental highway user motor
 4 fuel tax greater than five cents (\$0.05) on gasoline or two cents (\$0.02) on special
 5 fuel and, notwithstanding any adjustment which may be calculated as provided by
 6 this subsection, in no case shall the supplemental highway user motor fuel tax for
 7 any quarter be less than the previous quarter. The supplemental highway user motor
 8 fuel tax provided by this subsection and the provisions of subsection (1) of this
 9 section shall constitute the tax on motor fuels imposed by KRS 138.220.

- 10 (3) Effective with the calendar quarter beginning July 1, 1980, the department~~[cabinet]~~
 11 shall determine on a consistent basis the average wholesale price for each calendar
 12 quarter, on the basis of sales data accumulated for the first month of the preceding
 13 quarter. Notification of the average wholesale price shall be given to all licensed
 14 dealers at least twenty (20) days in advance of the first day of each calendar quarter.
- 15 (4) Dealers with a tax-paid gasoline or special fuel inventory at the time an average
 16 wholesale price becomes effective, shall be subject to additional tax or appropriate
 17 tax credit to reflect the increase or decrease in the average wholesale price for the
 18 new quarter. The department~~[cabinet]~~ shall promulgate such rules and regulations
 19 to properly administer this provision.

20 Section 355. KRS 138.224 is amended to read as follows:

21 It shall be presumed that all untaxed motor fuels are subject to the tax levied under KRS
 22 138.220 unless the contrary is established pursuant to KRS 138.210 to 138.500 or
 23 administrative regulations promulgated thereunder by the Department of Revenue~~[Cabinet]~~.
 24 The tax shall be paid by the licensed dealer to the department~~[cabinet]~~. The
 25 burden of proving that any motor fuel is not subject to tax shall be upon the dealer or any
 26 person who imports, causes to be imported, receives, uses, sells, stores, or possesses
 27 untaxed motor fuel in this state. Any dealer or other person who imports, causes to be

imported, receives, uses, sells, stores, or possesses untaxed motor fuels but fails to comply with all statutory and regulatory restrictions applicable to the fuel shall be jointly and severally liable for payment of the tax due on the fuel. A person's liability shall not be extinguished until the tax due has been paid to the department~~[cabinet]~~.

Section 356. KRS 138.226 is amended to read as follows:

(1) The department~~[cabinet]~~ shall administer the taxes provided under KRS 138.210 to 138.500, except KRS 138.463 and 138.4631 and may prescribe, adopt and enforce administrative regulations relating to the administration and enforcement thereof.

(2) The department~~[cabinet]~~ shall, upon the request of the officials to whom are entrusted the enforcement of the motor fuels tax law of any other state, the United States, the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the manufacture, receipt, sale, use, transportation, shipment or delivery by any person of motor fuels, provided such other state or states provide for the furnishing of like information to this state.

Section 357. KRS 138.230 is amended to read as follows:

Every dealer receiving gasoline or special fuel in this state shall keep, and preserve for five (5) years, an accurate record of all receipts and of all production, refining, manufacture, compounding, use, sale, distribution and delivery of gasoline and special fuel, together with invoices, bills of lading and other pertinent records and papers required by the Department of Revenue~~[Cabinet]~~. Every person purchasing gasoline or special fuel from a dealer for resale shall keep, and preserve for a period of five (5) years, a record of all such gasoline or special fuel so purchased and sold or used, and the amount of tax paid to the dealers as part of the purchase price, together with delivery tickets, invoices, bills of lading and such other records as the department~~[cabinet]~~ shall require.

Section 358. KRS 138.240 is amended to read as follows:

(1) Every gasoline dealer and every special fuels dealer, or the treasurer or other proper officer or agent of every such dealer, shall, by the twenty-fifth day of each month,

transmit to the Department of Revenue~~[Cabinet]~~ reports on the forms the department~~[cabinet]~~ may prescribe, of the total number of gallons of gasoline and special fuel received in this state during the next preceding calendar month. This report shall include the following information:

(a) An itemized statement of the number of gallons received that have been produced, refined, manufactured, or compounded by the dealer in this state during the next preceding calendar month; and

(b) An itemized statement of the number of gallons received by the dealer in this state from any source during the next preceding calendar month, as shown by shippers' invoices, other than the gasoline and special fuel falling within the provisions of paragraph (a) of this subsection, together with a statement showing the date of receipt, the name of the person from whom purchased, the date of receipt of each shipment, the point of origin and the point of destination, the quantity of each purchase or shipment, the name of the carrier, the initials and number of each tank car, the date of receipt, and the number of gallons contained in each car if shipped by rail or the name and owner of the boat, ship, truck, transport, barge, or vessel if shipped by water.

(2) The reports required by subsection (1) of this section shall also contain an itemized statement of the number of gallons received by the dealer during the preceding calendar month of:

(a) Gasoline and special fuels sold to the United States government, including sales or deliveries to others who sell or deliver the gasoline or special fuels to the United States government, for use exclusively in equipment or vehicles owned or leased by the United States government;

(b) Gasoline and special fuels sold for delivery in this state in transport truck, tank car, or cargo lots to licensed bonded dealers. The statement shall give a record of all such transport truck, tank car, or cargo sales, giving the date of

shipment, the number of gallons contained in each shipment, the name of owner and license number of truck if shipped by transport truck, the initials and number of the tank car if shipped by rail, the name and owner of the boat, barge, or vessel, and the number of gallons contained therein if shipped by water, and the name of the person to whom sold, point of shipment, and point of delivery;

(c) Gasoline and special fuels lost through accountable losses;

(d) Gasoline and special fuel exported from this state to any other state in transport truck, tank car or cargo lots;

(e) Gasoline or special fuel delivered upon or immediately adjacent to a river or stream, if:

1. The gasoline or special fuel is or will be delivered into the fuel supply tank of a commercial ship or vessel which has a valid certificate of documentation issued by the United States Coast Guard; and
2. All the fuel will be used exclusively in the operation of a commercial ship or vessel.

(f) Special fuel delivered to a railroad company principally engaged in the commercial transportation of property for others as a common carrier or in the conveyance of persons for hire, if the railroad company is the holder of a Kentucky motor fuels tax refund permit and certifies that the fuel is to be used exclusively for the purpose of powering locomotives and unlicensed company vehicles or equipment for nonhighway use. Railroad company as used herein shall not include any company described in KRS 136.120(4)(a) in effect on August 1, 1988; and

(g) Special fuels used in unlicensed vehicles or equipment by licensed special fuels dealers for nonhighway purposes related to the distribution of gasoline or special fuels to others.

- 1 (3) All gasoline and special fuel gallons received or distributed by a dealer from marine
2 terminal, refinery or pipeline terminal storage in this state shall be reported at sixty
3 (60) degrees Fahrenheit.

4 Section 359. KRS 138.250 is amended to read as follows:

- 5 (1) Any person who produces, refines, manufactures or compounds gasoline or special
6 fuel in this state shall, by the twenty-fifth day of each month, file a report with the
7 Department of Revenue~~[-Cabinet]~~, on forms prescribed by it, covering the next
8 preceding calendar month, showing the number of gallons of gasoline and special
9 fuels at sixty (60) degrees Fahrenheit produced, refined, manufactured or
10 compounded, the number of gallons at sixty (60) degrees Fahrenheit withdrawn
11 from storage and received and the number of gallons withdrawn at sixty (60)
12 degrees Fahrenheit from refinery storage and shipped to points outside of this state,
13 and the number of gallons at sixty (60) degrees Fahrenheit withdrawn from refinery
14 storage and shipped to points within this state upon which the tax has not been paid.
15 This report shall give in detail such information as the department~~[-cabinet]~~ may
16 require, regarding each separate shipment, the date of shipment, the number of
17 gallons at sixty (60) degrees Fahrenheit in each shipment, the name of owner and
18 license number of truck if shipped by transport truck, the initial and number of tank
19 car if shipped by rail, the name and owner of barge if shipped by water, the name
20 and address of person to whom shipped, the point of shipment, the point of
21 destination and the name of carrier to whom delivered for transportation to
22 destination.

- 23 (2) Any person who imports and stores gasoline or special fuel in any marine or
24 pipeline terminal storage in this state, shall by the twenty-fifth day of the month, file
25 a report with the Department of Revenue~~[-Cabinet]~~, on forms prescribed by it,
26 covering the next preceding calendar month, showing the number of gallons of
27 gasoline and special fuels at sixty (60) degrees Fahrenheit unexported and stored,

1 the number of gallons at sixty (60) degrees Fahrenheit withdrawn from storage and
 2 received, the number of gallons at sixty (60) degrees Fahrenheit withdrawn from
 3 storage and shipped to points outside of this state, and the number of gallons at sixty
 4 (60) degrees Fahrenheit withdrawn from storage and shipped to points within this
 5 state, upon which the tax has not been paid. This report shall give in detail such
 6 information as the department~~[cabinet]~~ may require, regarding each separate
 7 shipment, the date of shipment, the number of gallons at sixty (60) degrees
 8 Fahrenheit in each shipment, the name of owner and license number of truck if
 9 shipped by transport truck, the initial and number of tank car if shipped by rail, the
 10 name and owner of barge if shipped by water, the name and address of person to
 11 whom shipped, the point of shipment and point of destination, and the name of
 12 carrier to whom delivered for transportation to destination.

13 (3) There shall be allowed a monthly deduction for evaporation, shrinkage or
 14 unaccountable losses while in storage, of that number of gallons equal to the actual
 15 loss of gasoline or special fuel so sustained out of the total number of gallons of
 16 gasoline or special fuel stored in any marine terminal, refinery or pipeline terminal,
 17 except that such deduction may not in any event exceed three-fourths of one percent
 18 of the total number of gallons of gasoline or special fuel stored in any marine
 19 terminal, refinery or pipeline terminal. The remaining gasoline and special fuel
 20 placed in storage must be fully accounted for as in physical inventory, accountable
 21 loss, withdrawn for export or withdrawn from storage and received for taxable
 22 purposes.

23 (4) The number of gallons of gasoline or special fuel added to marine, pipeline or
 24 refinery storage shall be determined by the department~~[cabinet]~~ by actual
 25 measurement of terminal storage tanks in the manner it deems necessary.

26 Section 360. KRS 138.260 is amended to read as follows:

27 Every transportation company and every other person transporting gasoline or special fuel

1 from without this state to points within this state, or between points within this state, shall
 2 report to the Department of Revenue~~—Cabinet~~ on forms prescribed by the
 3 department~~cabinet~~. The reports shall give the name and address of each person to
 4 whom deliveries of gasoline or special fuel have been made, the name and address of the
 5 original consignee if deliveries are made to any other than the original consignee, the
 6 name and address of the consignor, the point of origin, the point of delivery, the date of
 7 delivery, the number and initials of each tank car if shipped by rail, the quantity of each
 8 shipment and delivery in gallons, the manner of shipment and delivery, and such other
 9 information as the department~~cabinet~~ may require relative to the transportation and
 10 delivery of such fuel. The reports shall include intracity switching movements in tank cars
 11 or otherwise. The reports shall be made under oath and shall be filed by the twenty-fifth
 12 day of each month, covering all such deliveries made within this state during the
 13 preceding calendar month.

14 Section 361. KRS 138.270 is amended to read as follows:

15 (1) (a) From the total number of gallons of gasoline and special fuel received by the
 16 dealer within this state during the next preceding calendar month, deductions
 17 shall be made for the total number of gallons received by the dealer within this
 18 state that were sold or otherwise disposed of during the next preceding
 19 calendar month as set forth in subsection (2) of KRS 138.240.

20 (b) To cover evaporation, shrinkage, unaccountable losses, collection costs, bad
 21 debts, and handling and reporting the tax, each dealer shall be allowed
 22 compensation equal to two and one-fourth percent (2.25%) of the net tax due
 23 the Commonwealth pursuant to KRS 138.210 to 138.500 before all allowable
 24 tax credits, except the credit authorized pursuant to KRS 138.358. No
 25 compensation shall be allowed if the completed tax return and payment are
 26 not submitted to the Department of Revenue~~—Cabinet~~ within the time
 27 prescribed by KRS 138.210 to 138.500.

1 (2) The tax imposed by KRS 138.220(1) and (2) shall be computed on the number of
 2 gallons remaining after the deductions set forth in subsection (1) of this section
 3 have been made, and shall constitute the amount of tax payable for the next
 4 preceding calendar month.

5 (3) Notwithstanding any other provision of this chapter to the contrary, any person who
 6 shall remit to the department~~[cabinet]~~, by the twenty-fifth day of the next month, an
 7 estimated tax due amount equal to not less than ninety-five percent (95%) of his tax
 8 liability, as finally determined for the report month, shall not be required to file the
 9 monthly reports required by this chapter until the last day of the month following
 10 the report month, and shall be permitted to claim as a credit against the tax liability
 11 shown due on the report the estimated tax due amount so paid.

12 Section 362. KRS 138.280 is amended to read as follows:

13 (1) The reports required by KRS 138.240 shall be accompanied by a certified or
 14 cashier's check, payable to the State Treasurer, for the amount of tax due for the
 15 preceding calendar month, computed as provided in KRS 138.270; except that the
 16 department~~[cabinet]~~ may waive this requirement and accept the dealer's check
 17 where the dealer is of sound financial condition and has established a good record
 18 of compliance with the requirements of KRS 138.210 to 138.340.

19 (2) By virtue of the allowance provided by KRS 138.270 to dealers for collecting and
 20 remitting the tax, every dealer is a trust officer of the state.

21 Section 363. KRS 138.300 is amended to read as follows:

22 No dealer or other person shall fail or refuse to make the returns and pay the tax
 23 prescribed by KRS 138.220 to 138.280, or refuse to permit the Department of
 24 Revenue~~[revenue cabinet]~~ or its representatives appointed by the commissioner of the
 25 Department of Revenue~~[secretary of revenue]~~ in writing to examine his records, papers,
 26 files and equipment pertaining to the taxable business. No person shall make an
 27 incomplete, false or fraudulent return, or do or attempt to do anything to avoid a full

1 disclosure of the amount of business done or to avoid the payment of the whole or any
2 part of the tax or penalties due. No person shall fail to keep and preserve records of
3 gasoline and special fuel manufactured, transported, received, used, sold or delivered or
4 to make reports as required by KRS 138.230 to 138.280.

5 Section 364. KRS 138.310 is amended to read as follows:

6 (1) No person shall refine, produce, distill, manufacture, blend, compound, receive, use,
7 sell, transport, store, or distribute any gasoline or special fuel upon which the tax
8 due has not been paid or assumed or engage in the sale, storage or transportation of
9 any gasoline or special fuel within this state upon which the tax has not been paid
10 unless he is the holder of an uncanceled license issued by the Department of
11 Revenue~~[Cabinet]~~ to engage in the business.

12 (2) Any transporter, other than a regularly licensed gasoline or special fuel dealer,
13 transporting gasoline or special fuel by motor vehicle shall have plainly painted on
14 the vehicle the name, address, and permit number of the transporter.

15 (3) Any person who engages in the business of refining, producing, distilling,
16 manufacturing, blending, compounding, receiving, using, selling, transporting,
17 storing, or distributing gasoline or special fuel in this state as a dealer, storage
18 operator, or transporter without holding an uncanceled license to engage in that
19 business, or who without the license, refines, produces, distills, manufacturers,
20 blends, compounds, receives, uses, sells, transports, stores, or distributes any
21 gasoline or special fuel upon which the tax imposed by KRS 138.220 has not been
22 reported and paid, shall be subject to the uniform civil penalties imposed pursuant
23 to KRS 131.180 and interest at the tax interest rate as defined in KRS 131.010(6)
24 from the date due until the date of payment.

25 Section 365. KRS 138.320 is amended to read as follows:

26 (1) To procure the license required by KRS 138.310, every dealer or transporter so
27 required shall file with the Department of Revenue~~[Cabinet]~~ an application in such

- 1 form and containing such information as the department[cabinet] may deem
2 necessary.
- 3 (2) If the dealer or transporter is a corporation organized under the laws of another
4 state, it shall file with its application a certified copy of the certificate or license
5 issued by the Secretary of State of this state showing that the corporation is
6 authorized to transact business in this state.
- 7 (3) At the time of filing application for a license, a bond of the character stipulated and
8 in the amount provided for in KRS 138.330 shall be filed with the
9 department[cabinet]. No license shall be issued upon any application unless
10 accompanied by this bond.
- 11 (4) If application for such a license is filed by any person whose license has at any time
12 previously been canceled for cause by the department[cabinet], or if the
13 department[cabinet] is of the opinion that the application is not filed in good faith,
14 or that the application is filed by some person as a subterfuge for the real person in
15 interest whose license or registration has previously been canceled for cause by the
16 department[cabinet], the department[cabinet] may, after a hearing of which the
17 applicant has been given five (5) days' notice in writing, and in which the applicant
18 shall have the right to appear in person or by counsel and present testimony, refuse
19 to issue a license to that person.
- 20 (5) The application in proper form having been accepted for filing, and the bond having
21 been accepted and approved, the department[cabinet] shall issue to the applicant a
22 license, subject to cancellation as provided by KRS 138.340. The license shall not
23 be assignable, and shall be valid only for the person in whose name it is issued, and
24 shall be displayed conspicuously in the principal place of business of the dealer in
25 this state.
- 26 (6) The department[cabinet] shall keep and file all applications and bonds, with an
27 alphabetical index thereof, together with a record of all licensed dealers or

1 transporters. The department~~[cabinet]~~ shall publish and keep currently up to date a
 2 list of licensed dealers and transporters, and transmit a copy of list and all revisions
 3 thereof to all licensed dealers and transporters.

- 4 (7) All licenses shall be valid and remain in full force and effect until suspended or
 5 revoked for cause or otherwise canceled.

6 Section 366. KRS 138.321 is amended to read as follows:

7 Any gasoline dealer or special fuels dealer having a license revoked for the violation of
 8 any of the provisions contained in KRS Chapter 138 may, within the discretion of the
 9 department~~[cabinet]~~, be denied the issuance of a gasoline dealer or special fuels dealer
 10 license, and any such licensee shall not have an interest in any such license, either
 11 disclosed or undisclosed, whether as an individual, partnership, corporation or otherwise.

12 Section 367. KRS 138.330 is amended to read as follows:

- 13 (1) Every dealer or transporter required to be licensed under KRS 138.310 shall file
 14 with the Department of Revenue~~[Cabinet]~~ a financial instrument in an amount not
 15 to exceed three (3) months' estimated liability as computed by the
 16 department~~[cabinet]~~ or five thousand dollars (\$5,000) whichever is greater, or in
 17 the case of a new licensee in the minimum amount of five thousand dollars (\$5,000)
 18 until such time as an estimated three (3) months' liability can be established,
 19 provided that the maximum amount of any financial instrument may be reduced to
 20 an amount sufficient in the opinion of the department~~[cabinet]~~, considering the
 21 financial rating and reputation of the company, to insure payment to the
 22 department~~[cabinet]~~ of the amount of tax, penalties and interest for which the
 23 dealer or transporter may become liable. The financial instrument shall be on a form
 24 and with a surety approved by the department~~[cabinet]~~. The dealer or transporter
 25 shall be the principal obligor and the state the obligee. The financial instrument
 26 shall be conditioned upon the prompt filing of true reports by the dealer and
 27 transporter and the payment by the dealer to the State Treasurer of all gasoline and

1 special fuel excise taxes now or hereafter imposed by the state, together with all
 2 penalties and interest thereon, and generally upon faithful compliance with the
 3 provisions of KRS 138.210 to 138.340.

4 (2) If liability upon the financial instrument is discharged or reduced, whether by
 5 judgment rendered, payment made, or otherwise, or if in the opinion of the
 6 department~~{cabinet}~~ any surety on the financial instrument has become
 7 unsatisfactory or unacceptable, the department~~{cabinet}~~ may require the licensee to
 8 file a new financial instrument with satisfactory sureties in the same amount, failing
 9 which the department~~{cabinet}~~ shall cancel the license of the licensee in accordance
 10 with the provisions of KRS 138.340. If a new financial instrument is furnished as
 11 provided above, the department~~{cabinet}~~ shall cancel and surrender the financial
 12 instrument for which the new financial instrument is substituted.

13 (3) If upon hearing, of which the licensee shall be given five (5) days' notice in writing,
 14 the department~~{cabinet}~~ decides that the amount of the existing financial instrument
 15 is insufficient to insure payment to the state of the amount of tax, penalties, and
 16 interest for which the licensee is or may become liable, the licensee shall, upon the
 17 written demand of the department~~{cabinet}~~, file an additional financial instrument
 18 in the same manner and form with a surety thereon approved by the
 19 department~~{cabinet}~~, in any amount determined by the department~~{cabinet}~~ to be
 20 necessary, failing which the department~~{cabinet}~~ shall cancel the license of the
 21 licensee in accordance with the provisions of KRS 138.340.

22 (4) Any surety on a financial instrument furnished as required by this section shall be
 23 released from all liability to the state accruing on the financial instrument after the
 24 expiration of sixty (60) days from the date upon which the surety has lodged with
 25 the department~~{cabinet}~~ a written request to be released, but this request shall not
 26 operate to release the surety from any liability already accrued or which shall accrue
 27 before the expiration of the sixty (60) day period. The department~~{cabinet}~~ shall

promptly, upon receipt of a request, notify the licensee who furnished the financial instrument, and unless the licensee, before the expiration of the sixty (60) day period, files with the department~~[cabinet]~~ a new financial instrument with a surety satisfactory to the department~~[cabinet]~~ in the amount and form prescribed in this section, the department~~[cabinet]~~ shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If an approved new financial instrument is filed, the department~~[cabinet]~~ shall cancel and surrender the financial instrument for which the new bond is substituted.

Section 368. KRS 138.340 is amended to read as follows:

- (1) If any dealer or transporter required to be licensed under KRS 138.310 files a false report of the data or information required by KRS 138.210 to 138.280, or fails, refuses or neglects to file the reports required by those sections, even though no tax is due, or to pay the full amount of tax as required by those sections, or fails to meet the qualifications of a dealer as set out in KRS 138.210(2), or violates any other provision of this chapter, the license of the dealer or transporter may be revoked by the Department of Revenue~~[Cabinet]~~. The licensee shall be notified by certified or registered letter or summons. The letter or summons shall apprise the licensee of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his license may be revoked. The summons may be served in the same manner and by the same officers or persons as provided by the Rules of Civil Procedure, or it may be served in that manner by an employee of the Department of Revenue~~[Cabinet]~~. The hearing shall be set at least five (5) days after the summons is served or the letter delivered. Any aggrieved licensee may appeal from an order of revocation by the Department of Revenue~~[Cabinet]~~ to the Kentucky Board of Tax Appeals as provided by law, subject to the condition that the licensee has made bond sufficient in the opinion of the Department of Revenue~~[Cabinet]~~ to protect the Commonwealth from loss of revenue.

1 (2) The department~~[cabinet]~~ may cancel the license:

2 (a) Upon request in writing from the licensee, the cancellation to become
3 effective sixty (60) days from the date of receipt of the request; or

4 (b) Upon determination that the licensee has had no reportable activity in
5 Kentucky for at least the immediately preceding six (6) consecutive monthly
6 reporting periods.

7 Section 369. KRS 138.341 is amended to read as follows:

8 (1) When gasoline or special fuel on which the tax has been paid pursuant to the
9 provisions of KRS 138.210 to 138.340 has been used for the purpose of operating
10 any aircraft engaged in the transportation of persons or property, the purchaser of
11 the liquid fuel so used shall be reimbursed for the tax paid. No tax shall be refunded
12 except that paid upon the fuel used exclusively in aircraft motors.

13 (2) No person shall be entitled to a refund hereunder unless he shall have first filed with
14 the Department of Revenue~~[Cabinet]~~ a bond with approved surety in an amount of
15 not less than one hundred dollars (\$100) nor more than one thousand dollars
16 (\$1,000) to be determined by the Department of Revenue~~[Cabinet]~~, conditioned
17 upon faithful compliance with this section and KRS 138.342 and upon the payment
18 to the Commonwealth of any refunds to which he was not entitled.

19 (3) The right to receive any refund pursuant to subsection (1) of this section shall be
20 assignable by the purchaser to the seller of the gasoline or special fuel if the seller
21 has posted a bond with the department~~[cabinet]~~ and the aviation gasoline or special
22 fuel purchased by the assignor is delivered directly into the fuel tank of aircraft
23 owned or operated by him or his authorized agent. Any assignment shall be
24 evidenced by noting upon the face and all copies of the retail sale invoice the
25 following: "TAX REFUND ASSIGNED TO SELLER. Signed: (Purchaser or
26 Agent.)"

27 Section 370. KRS 138.342 is amended to read as follows:

1 (1) Applications for refund pursuant to KRS 138.341 shall be made to the
 2 department~~[cabinet]~~ on a calendar quarter or calendar year basis on forms and in
 3 the manner prescribed by it for the refund of tax paid on aviation motor fuel used
 4 during the calendar quarter or calendar year. Each application for a refund shall
 5 show the number of gallons of aviation motor fuel purchased during the preceding
 6 month; the date and quantity of each purchase; the vendor from whom the fuel was
 7 purchased; the number of gallons on which refund is claimed; and other information
 8 the department~~[cabinet]~~ may require.

9 (2) The department~~[cabinet]~~ shall audit the application and make other investigation it
 10 deems necessary to determine whether it constitutes a proper claim. When the
 11 department~~[cabinet]~~ is satisfied that a refund is proper, it shall authorize the tax
 12 paid to be refunded as other refunds are made and the amount refunded shall be
 13 deducted from current motor fuel tax receipts. The tax shall be refunded with
 14 interest at the tax interest rate as defined in KRS 131.010(6).

15 (3) When the department~~[cabinet]~~ finds that an application for a refund contains a false
 16 or fraudulent statement or that a refund has been fraudulently obtained, the
 17 department~~[cabinet]~~ shall refuse to grant any refunds to the person making the false
 18 or fraudulent statement or fraudulently obtaining a refund for a period of two (2)
 19 years from the date of the finding.

20 Section 371. KRS 138.344 is amended to read as follows:

21 (1) Except as otherwise provided in KRS 138.220 to 138.500, any person who shall
 22 purchase gasoline or special fuel, on which the tax as imposed by KRS 138.220 has
 23 been paid, for the purpose of operating or propelling stationary engines or tractors
 24 for agricultural purposes, or who shall purchase special fuels, on which the tax as
 25 imposed by KRS 138.220 has been paid, for consumption in unlicensed vehicles or
 26 equipment for nonhighway purposes shall be reimbursed for the tax so paid on the
 27 gasoline or special fuel. No refund shall be authorized unless applications and all

1 necessary information are filed with the department~~{cabinet}~~ on a calendar quarter
 2 or calendar year basis on forms and in the manner prescribed by it for refund of the
 3 tax paid on the fuel. In lieu of the tax refund procedure, the tax on special fuels and
 4 the tax on gasoline used for the purpose of operating or propelling stationary
 5 engines or tractors for agricultural purposes may be credited by the dealer to the
 6 purchaser as provided in KRS 138.358. The dealer and the purchases shall be
 7 subject to the same rules, conditions, and responsibilities as provided in KRS
 8 138.344 to 138.355. The tax shall be refunded with interest at the tax interest rate as
 9 defined in KRS 131.010(6).

- 10 (2) The information to be required from the permit holder, by the department~~{cabinet}~~,
 11 in order that the refund may be allowed, shall be as follows:
- 12 (a) Name and address of permit holder permit number
 - 13 (b) Total number of gallons purchased and total purchase price (Invoices to
 14 be attached to refund application.)
 - 15 (c) Total number of gallons used on highways
 - 16 (d) Total number of gallons on which refund is claimed (Line b minus line c.)
 - 17 (e) Other information as the department~~{cabinet}~~ may require to reasonably
 18 protect the revenues of the Commonwealth.

19 Section 372. KRS 138.345 is amended to read as follows:

20 No person shall secure a refund of tax under KRS 138.344 unless the person is the holder
 21 of an unrevoked refund permit issued by the Department of Revenue~~{Cabinet}~~ before the
 22 purchase of the gasoline or special fuel, which permit shall entitle the person to make
 23 application for a refund under KRS 138.344 to 138.355. To procure a permit, every
 24 person shall file with the department~~{cabinet}~~ an application under oath, on forms
 25 furnished by the department~~{cabinet}~~, setting forth the information incident to the
 26 refunding of the tax paid on gasoline or special fuel as the department~~{cabinet}~~ may
 27 require. The properly completed and signed application shall be filed with the

1 department[cabinet] on or before the date the permit, if approved by the
 2 department[cabinet], is to become effective.

3 Section 373. KRS 138.346 is amended to read as follows:

4 The department[cabinet] may require the applicant to execute a corporate surety bond to
 5 be approved by the department[cabinet], conditioned upon the payment of all taxes,
 6 penalties and fines for which such applicant may become liable under KRS 138.344 to
 7 138.355. Such bond shall be in an amount equal to an applicant's one (1) year estimated
 8 refund claim, but not less than one thousand dollars (\$1,000).

9 Section 374. KRS 138.347 is amended to read as follows:

10 (1) Each licensed gasoline and special fuel dealer shall, in accordance with the
 11 department's[cabinet's] requirements, keep at his principal place of business in this
 12 state a complete record of all such gasoline and special fuel sold by him under
 13 gasoline refund invoices provided for in KRS 138.351, which records shall give the
 14 date of each such sale, the number of gallons sold, the name of the person to whom
 15 sold and the sale price.

16 (2) Every person to whom a refund permit has been issued under KRS 138.345 shall, in
 17 accordance with the department's[cabinet's] requirements, keep at his residence or
 18 principal place of business in this state a record of each purchase of gasoline and
 19 special fuel from a licensed dealer or the dealer's authorized agent, the number of
 20 gallons purchased, the name of the seller, and the date of purchase.

21 (3) The records required to be kept under subsections (1) and (2) of this section shall at
 22 all reasonable hours be subject to inspection by the department[cabinet] or by any
 23 person duly authorized by it. Such records shall be preserved and shall not be
 24 destroyed until five (5) years after the date the gasoline and special fuel to which
 25 they relate was sold and purchased.

26 Section 375. KRS 138.348 is amended to read as follows:

27 (1) The department[cabinet] may require any dealer or any dealer's authorized agent to

1 identify refund gasoline or special fuel sold by him by adding thereto any chemical
 2 or substance, which shall be furnished by the cabinet and used in the manner as
 3 prescribed by the department~~[cabinet]~~.

4 (2) The refund permit holder shall receive and store all the gasoline and special fuel in
 5 containers plainly marked with distinguishing letters "Refund Motor Fuel," or
 6 comparable letters prescribed by the Department of Revenue~~[Cabinet]~~, and shall
 7 keep the containers on his premises accessible to agents of the department~~[cabinet]~~
 8 and separate from other gasoline and special fuel stored on his premises.

9 (3) The Department of Revenue~~[Cabinet]~~ may, within its discretion, issue a refund
 10 permit for a portable storage facility if the applicant satisfies the
 11 department~~[cabinet]~~ that the facility will be used exclusively for the purpose of
 12 fueling unlicensed vehicles or equipment at multiple locations for nonhighway
 13 purposes, and fueling the vehicles or equipment from a nonportable facility would
 14 not be practical.

15 (4) Every refund permit holder who uses on the public highways motor fuel of the type
 16 for which refund is claimed shall keep detailed records of all the motor fuel
 17 acquired, monthly odometer readings of all licensed motor vehicles owned or
 18 operated by the holder which use the fuel, and other records the Department of
 19 Revenue~~[Cabinet]~~ may, in writing, require to protect the revenues of the
 20 Commonwealth.

21 (5) Agents of the department~~[cabinet]~~ may go upon the premises of any permit holder
 22 or of any licensed gasoline or special fuel dealer or his authorized agent to make
 23 inspections to ascertain any matter connected with the operation of KRS 138.344 to
 24 138.355 or the enforcement thereof. No agent shall enter the dwelling of any person
 25 without the occupant's consent or the authority from a court of competent
 26 jurisdiction.

27 Section 376. KRS 138.351 is amended to read as follows:

- 1 (1) When gasoline or special fuel is sold to a person who shall claim to be entitled to
2 refund under KRS 138.344, the licensed dealer or his duly authorized agent who
3 sells the gasoline or special fuel shall make out in duplicate a gasoline or special
4 fuel refund invoice supplied or approved in writing by the department~~[cabinet]~~,
5 which invoice shall have printed thereon that the liability to the Commonwealth of
6 Kentucky for the excise tax imposed under KRS 138.220 with respect to the
7 gasoline or special fuel has been assumed by the seller and that the excise tax has
8 already been paid or will be paid by the seller when the same shall become payable,
9 a statement setting forth the name and address of the purchaser, the number of
10 gallons of gasoline or special fuel so sold, the proposed use for which the gasoline
11 or special fuel is purchased, and other information as the department~~[cabinet]~~ shall
12 require. The original gasoline or special fuel refund invoice shall be given to the
13 purchaser, and the duplicate shall be retained by the seller.
- 14 (2) The refund permit holder shall file with the department~~[cabinet]~~ an application for
15 refund on forms furnished by the department~~[cabinet]~~, stating the quantity of
16 gasoline and special fuel used for the purposes as set out in KRS 138.344. The
17 application shall be accompanied by the original invoice, or certified copy thereof,
18 showing the purchase, and, if required by the department~~[cabinet]~~, evidence of
19 payment therefor. When the department~~[cabinet]~~ is satisfied that a refund is proper,
20 it shall authorize the tax paid to be refunded as other refunds are made; and the
21 amount refunded shall be deducted from gasoline or special fuel tax receipts as
22 appropriate.
- 23 (3) The right to receive any refund under the provisions of this section shall not be
24 assignable, except to the executor or administrator, or to the receiver, trustee in
25 bankruptcy, or assignee in insolvency proceedings of the person entitled thereto.
- 26 (4) Interest on refunds authorized under the provisions of this section shall be paid at
27 the tax interest rate, as defined in KRS 131.010(6), and shall begin to accrue sixty

1 (60) days after the postmark date of the application for refund.

2 Section 377. KRS 138.353 is amended to read as follows:

3 If any excise taxes on gasoline or special fuel be erroneously refunded, the
4 department~~[cabinet]~~ shall issue an assessment for the amount erroneously refunded. The
5 refund error shall be assessed, collected, and paid in the same manner as if it were a
6 deficiency.

7 Section 378. KRS 138.354 is amended to read as follows:

8 (1) No person shall make a false or fraudulent statement in an application for a refund
9 permit or in a gasoline or special fuel refund invoice, or in an application for a
10 refund of any taxes as set out in KRS 138.344 to 138.355; or fraudulently obtain a
11 refund of such taxes; or knowingly aid or assist in making any such false or
12 fraudulent statement or claim; or having bought gasoline or special fuel under the
13 provisions of KRS 138.344 to 138.355, shall use or permit such gasoline or special
14 fuel or any part thereof to be used for any purpose other than as provided in KRS
15 138.344.

16 (2) The refund permit of any person who shall violate any provision of subsection (1) of
17 this section may be revoked by the Department of Revenue~~[Cabinet]~~ subject to
18 appeal to the Kentucky Board of Tax Appeals as provided by law, and may not be
19 reissued until two (2) years have elapsed from the date of such revocation.

20 (3) The refund permit of any person who shall violate any provision of KRS 138.344 to
21 138.355, other than those contained in subsection (1) of this section, may be
22 suspended by the Department of Revenue~~[Cabinet]~~ for any period in its discretion
23 not exceeding six (6) months with the right of appeal to the Kentucky Board of Tax
24 Appeals.

25 (4) If a dealer violates any provision of KRS 138.344 to 138.355, his privilege to sign
26 refund invoices may be suspended by the Department of Revenue~~[Cabinet]~~ for a
27 period of not more than two (2) years subject to appeal to the Kentucky Board of

1 Tax Appeals. No refund shall be made on gasoline or special fuel purchased from a
2 dealer while a suspension of his privilege to sign refund invoices is in effect.

3 Section 379. KRS 138.355 is amended to read as follows:

4 If the department~~[cabinet]~~ reasonably believes that any dealer or refund permit holder has
5 been guilty of a violation of KRS 138.344 to 138.355, which would subject the dealer or
6 permit holder to a suspension or revocation of his license or permit under the provisions
7 of subsections (2), (3) or (4) of KRS 138.354, said dealer or permit holder may be cited
8 by the department~~[cabinet]~~ to show cause at a public hearing before the Department of
9 Revenue~~[cabinet]~~ why his license or permit should not be suspended or revoked. The
10 dealer or refund permit holder shall be notified by certified or registered letter. The letter
11 shall inform the dealer or refund permit holder of the charge or charges made against him
12 and he shall have a reasonable opportunity to be heard before his license or permit may be
13 revoked or suspended. The hearing shall be set at least five (5) days after the receipt of
14 the letter. Any aggrieved dealer or refund permit holder may appeal any order entered to
15 the Kentucky board of tax appeals as provided by law, subject to the condition that he
16 make bond sufficient in the opinion of the department~~[cabinet]~~ to protect the
17 Commonwealth from loss of revenue.

18 Section 380. KRS 138.358 is amended to read as follows:

19 (1) Any special fuels dealer who delivers special fuels, on which the tax imposed by
20 KRS 138.220 has been paid, into a tank having no dispensing outlet and used
21 exclusively to heat a personal residence, shall be entitled to claim a credit against
22 the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer
23 obtains from the purchaser and retains in his files a signed and dated statement from
24 the purchaser certifying that the fuel will be used exclusively to heat the personal
25 residence to which it is delivered. No person so certifying shall use the special fuel
26 for any other purpose. The Department of Revenue~~[Cabinet]~~ may require dealers
27 claiming the credit authorized herein to submit information required by the

- 1 department~~[cabinet]~~ to reasonably protect the revenues of the Commonwealth.
- 2 (2) Any special fuels dealer who sells gasoline or special fuels, on which the tax
- 3 imposed by KRS 138.220 has been paid, exclusively for the purpose of operating or
- 4 propelling stationary engines or tractors for agricultural purposes, shall be entitled
- 5 to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid
- 6 on the fuel if the dealer obtains from the purchaser and retains in his files a signed
- 7 and dated statement from the purchaser certifying that the fuel will be used
- 8 exclusively for the purpose of operating or propelling stationary engines or tractors
- 9 for agricultural purposes. No person so certifying shall use gasoline or the special
- 10 fuels for any other purpose. Sales made from a retail filling station do not qualify
- 11 for the credit. The Department of Revenue~~[Cabinet]~~ may require dealers claiming
- 12 the credit authorized herein to submit information required by the
- 13 department~~[cabinet]~~ to reasonably protect the revenues of the Commonwealth.
- 14 (3) Any special fuels dealer who delivers special fuels, on which the tax imposed by
- 15 KRS 138.220 has been paid, into a nonhighway use storage tank of a resident
- 16 nonprofit religious, charitable, or educational organization or state or local
- 17 governmental agency which has qualified for exemption from Kentucky sales and
- 18 use tax pursuant to KRS 139.470(7) or 139.495 shall be entitled to claim a credit
- 19 against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the
- 20 dealer obtains from the purchaser and retains in his files a signed and dated
- 21 statement certifying the purchaser's sales and use tax purchase exemption
- 22 authorization issued pursuant to KRS Chapter 139. No organization or agency so
- 23 certifying shall use or allow the use of any nonhighway special fuel so acquired for
- 24 any purpose other than fueling unlicensed vehicles or equipment for nonhighway
- 25 purposes. The Department of Revenue~~[Cabinet]~~ may require dealers claiming the
- 26 credit authorized herein to submit information required by the department~~[cabinet]~~
- 27 to reasonably protect the revenues of the Commonwealth.

1 (4) Any special fuels dealer who sells special fuels, on which the tax imposed by KRS
 2 138.220 has been paid, which shall be used exclusively for consumption in
 3 unlicensed vehicles or equipment for nonhighway purposes, shall be entitled to
 4 claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on
 5 the fuel if the dealer obtains from the purchaser and retains in his files a signed and
 6 dated statement from the purchaser certifying that the fuel will be used exclusively
 7 for nonhighway purposes. No person making the certification shall use the special
 8 fuels for any other purpose. Sales made from a retail filling station do not qualify
 9 for the credit. The Department of Revenue~~[Cabinet]~~ may require dealers claiming
 10 the credit authorized in this subsection to submit information required by the
 11 department~~[cabinet]~~ to reasonably protect the revenues of the Commonwealth. This
 12 credit shall not apply to special fuels taxes subject to a refund under KRS 138.445.

13 Section 381. KRS 138.445 is amended to read as follows:

14 (1) Except as provided in KRS 138.240(2)(e), any person who buys any liquid fuel for
 15 the purpose of dispensing it directly into fuel tanks installed in or attached to
 16 watercraft, for the purpose of operating or propelling watercraft, shall be reimbursed
 17 for the tax paid by him pursuant to the provisions of KRS 138.220 to 138.340 upon
 18 presenting to the department~~[cabinet]~~ an application accompanied by the original
 19 invoices showing the payment of the purchases, including the liquid fuel tax. The
 20 application shall set forth the total amount of the liquid fuel purchased and used by
 21 the applicant in the operation or propulsion of watercraft.

22 (2) (a) When liquid fuel on which the tax has been paid pursuant to the provisions of
 23 KRS 138.220 to 138.340 has been used for the purpose of operating any
 24 watercraft and was delivered directly to the fuel tanks installed in or attached
 25 to the watercraft, the purchaser of the liquid fuel so used shall be reimbursed
 26 for the tax paid. No tax shall be refunded except that paid upon the fuel used
 27 exclusively in watercraft motors; and

1 (b) No person shall be entitled to a refund hereunder unless he shall have first
 2 filed with the department~~[cabinet]~~ a bond with approved surety in the amount
 3 of not less than one hundred dollars (\$100) nor more than one thousand
 4 dollars (\$1,000) to be determined by the department~~[cabinet]~~ and upon the
 5 payment to the Commonwealth of any refunds to which he was not entitled.

6 (3) All refund claims authorized by this section shall be filed with the
 7 department~~[cabinet]~~ on a calendar quarter or calendar year basis on forms and in
 8 the manner prescribed by it for refund of the tax paid on the fuel. If the application
 9 for refund is mailed to the department~~[cabinet]~~, the date of mailing as shown by the
 10 postmark shall be taken as the time and date of filing with the department~~[cabinet]~~.

11 (4) Refunds shall be made only on gasoline and special fuels purchased by locations
 12 designated by the department~~[cabinet]~~. The tax shall be refunded with interest at
 13 the tax interest rate as defined in KRS 131.010(6).

14 Section 382. KRS 138.446 is amended to read as follows:

15 (1) City and suburban bus companies and taxicab companies operating under a
 16 certificate of convenience and necessity issued pursuant to KRS Chapter 281,
 17 taxicab companies regulated by a consolidated local government organized under
 18 KRS Chapter 67C or by an urban-county government organized under KRS Chapter
 19 67A, holders of a nonprofit bus certificate as provided by KRS 281.619, and senior
 20 citizen programs which utilize Title III funds of the Older Americans Act in the
 21 provision of transportation services shall be entitled to a refund of seven-ninths
 22 (7/9) of the amount of KRS Chapter 138 taxes paid on motor fuels used in their
 23 regularly scheduled operations in Kentucky.

24 (2) No person shall be entitled to a refund pursuant to this section unless he shall have
 25 first filed with the department~~[cabinet]~~ a bond issued by a surety company
 26 authorized to do business in Kentucky in an amount of not less than one thousand
 27 dollars (\$1,000) nor more than five thousand dollars (\$5,000) to be determined by

1 the department{cabinet}, conditioned upon faithful compliance with this section and
2 upon the payment to the Commonwealth of any refunds to which he was not
3 entitled.

4 (3) Applications for refund shall be filed with the department{cabinet} on a calendar
5 quarter or calendar year basis on forms and in the manner prescribed by it for refund
6 of tax paid on motor fuel used by buses or taxicabs. Each application for a refund
7 shall show the number of gallons of motor fuel purchased during the quarter for use
8 in buses or taxicabs; the date and quantity of each purchase; the vendor from whom
9 the fuel was purchased; the number of gallons on which refund is claimed; and
10 other information the department{cabinet} may require. Invoices shall be attached
11 to applications from taxicab companies.

12 (4) The department{cabinet} may require any gasoline dealer or any dealer's authorized
13 agent to identify gasoline sold by him for taxicab use by adding any chemical or
14 substance, which shall be furnished by the department{cabinet} and used in the
15 manner as prescribed by the department{cabinet}. The department{cabinet} also
16 may require that the dealer keep a complete record of all the gasoline sold by him,
17 which records shall give the date of each sale, the number of gallons sold, the name
18 of the person to whom sold, and the sale price.

19 (5) The department{cabinet} shall audit the application and make any other
20 investigation it deems necessary to determine whether it constitutes a proper claim.
21 When the department{cabinet} is satisfied that a refund is proper, it shall authorize
22 seven-ninths (7/9) of the amount of the tax paid to be refunded as other refunds are
23 made and the amount refunded shall be deducted from current motor fuel tax
24 receipts. The tax shall be refunded with interest at the tax interest rate as defined in
25 KRS 131.010(6).

26 (6) When the department{cabinet} finds that an application for a refund contains a false
27 or fraudulent statement or that a refund has been fraudulently obtained, the

1 department~~{cabinet}~~ shall refuse to grant any refunds to the person making the false
 2 or fraudulent statement or fraudulently obtaining a refund for a period of two (2)
 3 years from the date of the findings.

4 (7) The department~~{cabinet}~~ may prescribe, promulgate and enforce administrative
 5 regulations relating to the administration and enforcement of this section.

6 (8) The refund provided for in this section shall be effective on motor fuel purchased on
 7 or after July 1, 1978.

8 Section 383. KRS 138.447 is amended to read as follows:

9 (1) A dealer may elect to be exempted from the provisions of KRS 138.330, subject to
 10 the following provisions:

11 (a) An election for exemption shall be made on an annual basis and shall be for a
 12 calendar year;

13 (b) At the conclusion of the year, the election for exemption shall continue for the
 14 next calendar year unless the dealer notifies the Department of Revenue~~{~~
 15 Cabinet~~}~~ of the dealer's intention to void the election for exemption by January
 16 fifteenth of the next calendar year; and

17 (c) If the election for exemption is voided, the provisions of KRS 138.330
 18 immediately apply.

19 (2) (a) A dealer electing to be exempted from the provisions of KRS 138.330 shall
 20 file with the department~~{cabinet}~~ a financial instrument in an amount not to
 21 exceed two (2) months' estimated liability, as calculated by the
 22 department~~{cabinet}~~, or five thousand dollars (\$5,000), whichever is greater.

23 (b) The financial instrument shall be on a form and with a surety to do business in
 24 this state.

25 (c) The dealer shall be the principal obligor and the state the obligee.

26 (d) The financial instrument shall be conditioned upon the prompt filing of true
 27 reports and the payment by the dealer to the State Treasurer of all gasoline and

1 special fuel excise taxes now or hereafter imposed by the state, together with
 2 all penalties and interest thereon, and generally upon faithful compliance with
 3 the provisions of KRS 138.210 to 138.340.

- 4 (3) (a) In addition to the provisions of KRS 138.210 to 138.340 the dealer shall
 5 certify to the department~~[cabinet]~~ no later than the fifteenth day of each
 6 month the amount of gasoline and special fuels tax due the Commonwealth by
 7 the twenty-fifth day of that month.
- 8 (b) The certification shall be submitted via an electronic method acceptable by
 9 both the dealer and the cabinet.
- 10 (c) By certifying the amount of tax which is to be remitted to the
 11 department~~[cabinet]~~, the dealer agrees to initiate an Automated Clearing
 12 House credit transaction to electronically transfer the amount of tax from the
 13 dealer's account to the Kentucky State Treasurer on the twenty-fifth day of
 14 that month.
- 15 (d) If the dealer fails to certify the amount of tax collected as prescribed by this
 16 section or does not perform the electronic fund transfer, the
 17 department~~[cabinet]~~ may immediately make demand on the financial
 18 instrument and revoke the license of the dealer notwithstanding the provisions
 19 of KRS 138.340.

20 Section 384. KRS 138.448 is amended to read as follows:

- 21 (1) Notwithstanding any other provision of this chapter to the contrary, the president,
 22 vice president, secretary, treasurer, or any other person holding any equivalent
 23 corporate office of any corporation subject to the provisions of KRS 138.210 to
 24 138.446 shall be personally and individually liable, both jointly and severally, for
 25 the tax imposed under KRS 138.210 to 138.446. Corporate dissolution, withdrawal
 26 of the corporation from the state, or the cessation of holding any corporate office
 27 shall not discharge the liability of any person. The personal and individual liability

shall apply to each and every person holding a corporate office at the time the tax becomes or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.210 to 138.446 at the time the tax imposed becomes or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and 131.990.

(a) The provisions of this section shall not apply if a corporation on an annual basis elects to be exempt from the provisions of KRS 138.224 by:

1. Filing with the department~~[cabinet]~~ a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the department~~[cabinet]~~, or five thousand dollars (\$5,000), whichever is greater;
2. Certifying by an electronic method acceptable by both the dealer and the department~~[cabinet]~~ no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month; and
3. Agreeing to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.

For the purpose of this paragraph, a "financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

(b) If a dealer fails to certify the amount of tax collected or does not perform the electronic fund transfer as prescribed by paragraph (a) of this subsection, the department~~[cabinet]~~ may immediately make demand of the financial

instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340, and the provisions of this section shall apply.

(2) Notwithstanding any other provision of this chapter, KRS 275.150, or KRS 362.220(2) to the contrary, the managers of a limited liability company and the partners of a registered limited liability partnership or any other person holding any equivalent office of a limited liability company or a registered limited liability partnership subject to the provisions of KRS 138.210 to 138.446 shall be personally and individually liable, both jointly and severally, for the tax imposed under KRS 138.210 to 138.446. Dissolution, withdrawal of the limited liability company or registered limited liability partnership from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company and partner of a registered limited liability partnership at the time the tax becomes or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.210 to 138.446 at the time the tax becomes or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and KRS 131.990.

(a) The provisions of this section shall not apply if a limited liability company or a registered limited liability partnership on an annual basis elects to be exempt from the provisions of KRS 138.224 by:

1. Filing with the department~~[cabinet]~~ a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the department~~[cabinet]~~, or five thousand dollars (\$5,000), whichever is greater;

2. Certifying by an electronic method acceptable by both the dealer and the department~~cabinet~~ no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month; and
3. Agreeing to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.

For the purpose of this paragraph, a "financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

- (b) If a dealer fails to certify the amount of tax collected or does not perform the electronic fund transfer prescribed by paragraph (a) of this subsection, the department~~cabinet~~ may immediately make demand of the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340, and the provisions of this section shall apply.

Section 385. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

- (1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, if the same model and make is being offered for sale by local dealers;
- (2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;
- (3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;
- (4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;

- 1 (5) "Motor vehicle" means any vehicle that is propelled by other than muscular power
2 and that is used for transportation of persons or property over the public highways
3 of the state, except road rollers, mopeds, vehicles that travel exclusively on rails,
4 and vehicles propelled by electric power obtained from overhead wires;
- 5 (6) "Moped" means either a motorized bicycle whose frame design may include one (1)
6 or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a
7 motorized bicycle with a step through type frame which may or may not have pedals
8 rated no more than two (2) brake horsepower, a cylinder capacity not exceeding
9 fifty (50) cubic centimeters, an automatic transmission not requiring clutching or
10 shifting by the operator after the drive system is engaged, and capable of a
11 maximum speed of not more than thirty (30) miles per hour;
- 12 (7) "New motor vehicle" means a motor vehicle of the current model year which has
13 not previously been registered in any state or country;
- 14 (8) "Previous model year motor vehicle" means a motor vehicle not previously
15 registered in any state or country which is neither of the current model year nor a
16 dealer demonstrator;
- 17 (9) "Total consideration given" means the amount given, valued in money, whether
18 received in money or otherwise, at the time of purchase or at a later date, including
19 consideration given for all equipment and accessories, standard and optional, as
20 attested to in a notarized affidavit signed by both the buyer and the seller. The
21 signatures of the buyer and seller shall be individually notarized. "Total
22 consideration given" shall not include:
- 23 (a) Any amount allowed as a manufacturer or dealer rebate if the rebate is
24 provided at the time of purchase and is applied to the purchase of the motor
25 vehicle;
- 26 (b) Any interest payments to be made over the life of a loan for the purchase of a
27 motor vehicle; and

1 (c) The value of any items that are not equipment or accessories including but not
 2 limited to extended warranties, service contracts, and items that are given
 3 away as part of a promotional sales campaign;

4 (10) "Trade-in allowance" means the value assigned by the seller of a motor vehicle to a
 5 motor vehicle offered in trade by the purchaser as part of the total consideration
 6 given by the purchaser and included in the notarized affidavit attesting to total
 7 consideration given;

8 (11) "Used motor vehicle" means a motor vehicle which has been previously registered
 9 in any state or country;

10 (12) "Retail price" of motor vehicles shall be determined as follows:

11 (a) For new, dealer demonstrator, previous model year motor vehicles and U-
 12 Drive-It motor vehicles that have been transferred within one hundred eighty
 13 (180) days of being registered as a U-Drive-It and that have less than five
 14 thousand (5,000) miles, "retail price" shall be the total consideration given at
 15 the time of purchase or at a later date, including any trade-in allowance as
 16 attested to in a notarized affidavit. If a notarized affidavit signed by both the
 17 buyer and seller is not available to establish total consideration given, "retail
 18 price" shall be:

- 19 1. Ninety percent (90%) of the manufacturer's suggested retail price of the
 20 vehicle with all equipment and accessories, standard and optional, and
 21 transportation charges; or
- 22 2. Eighty-one percent (81%) of the manufacturer's suggested retail price of
 23 the vehicle with all equipment and accessories, standard and optional,
 24 and transportation charges in the case of new trucks of gross weight in
 25 excess of ten thousand (10,000) pounds; and
- 26 3. "Retail price" shall not include that portion of the price of the vehicle
 27 attributable to equipment or adaptive devices necessary to facilitate or

1 accommodate an operator or passenger with physical disabilities;

2 (b) For historic motor vehicles, "retail price" shall be one hundred dollars (\$100);

3 (c) For used motor vehicles being registered by a new resident for the first time in
4 Kentucky whose values appear in the automotive reference manual prescribed
5 by the Department of Revenue~~Cabinet~~, "retail price" shall be the average
6 trade-in value given in the reference manual;

7 (d) For the older used motor vehicles being registered by a new resident for the
8 first time in Kentucky whose values no longer appear in the automotive
9 reference manual, "retail price" shall be one hundred dollars (\$100);

10 (e) For used motor vehicles previously registered in another state or country that
11 were purchased out-of-state by a Kentucky resident who is registering the
12 vehicle in Kentucky for the first time, "retail price" shall be the total
13 consideration given at the time of purchase or at a later date, including the
14 average trade-in value given in the automotive reference manual prescribed by
15 the Department of Revenue~~Cabinet~~ for any vehicle given in trade;

16 (f) For used motor vehicles previously registered in Kentucky that are sold in
17 Kentucky, and U-Drive-It motor vehicles that are not transferred within one
18 hundred eighty (180) days of being registered as a U-Drive-It or that have
19 more than five thousand (5,000) miles, "retail price" means the total
20 consideration given, excluding any amount allowed as a trade-in allowance by
21 the seller. The trade-in allowance shall be disclosed in the notarized affidavit
22 signed by the buyer and the seller attesting to the total consideration given. If a
23 notarized affidavit signed by both the buyer and the seller is not available to
24 establish the total consideration given for a motor vehicle, "retail price" shall
25 be established by the Department of Revenue~~Cabinet~~ through the use of the
26 automotive reference manual prescribed by the Department of Revenue~~Cabinet~~;
27

- 1 (g) Except as provided in KRS 138.470(6), if a motor vehicle is received by an
 2 individual as a gift and not purchased or leased by the individual, "retail price"
 3 shall be the average trade-in value given in the automotive reference manual
 4 prescribed by the Department of Revenue~~Cabinet~~;
- 5 (h) If a dealer transfers a motor vehicle which he has registered as a loaner or
 6 rental motor vehicle within one hundred eighty (180) days of the registration,
 7 and if less than five thousand (5,000) miles have been placed on the vehicle
 8 during the period of its registration as a loaner or rental motor vehicle, then
 9 the "retail price" of the vehicle shall be the same as the retail price determined
 10 by paragraph (a) of this subsection computed as of the date on which the
 11 vehicle is transferred; and
- 12 (13) "Loaner or rental motor vehicle" means a motor vehicle owned or registered by a
 13 dealer and which is regularly loaned or rented to customers of the service or repair
 14 component of the dealership.
- 15 Section 386. KRS 138.460 is amended to read as follows:
- 16 (1) A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the
 17 use in this state of every motor vehicle, except those exempted by KRS 138.470, at
 18 the time and in the manner provided in this section.
- 19 (2) The tax shall be collected by the county clerk or other officer with whom the
 20 vehicle is required to be registered:
- 21 (a) When he collects the registration fee for registering and licensing a motor
 22 vehicle the first time it is offered for registration in this state;
- 23 (b) Or upon the transfer of ownership of any motor vehicle previously registered
 24 in this state.
- 25 (3) The tax collected by the county clerk under this section shall be reported and
 26 remitted to the Department of Revenue~~Cabinet~~ on forms provided by the
 27 department~~cabinet~~ and on those forms as the department~~cabinet~~ may prescribe.

- 1 The department~~[cabinet]~~ shall provide each county clerk affidavit forms which the
 2 clerk shall provide to the public free of charge to carry out the provisions of KRS
 3 138.450. The county clerk shall for his services in collecting the tax be entitled to
 4 retain an amount equal to three percent (3%) of the tax collected and accounted for.
- 5 (4) A county clerk or other officer shall not register or issue any license tags to the
 6 owner of any motor vehicle subject to this tax, when the vehicle is then being
 7 offered for registration for the first time, or transfer the ownership of any motor
 8 vehicle previously registered in this state, unless the owner or his agent pays the tax
 9 levied under this section in addition to the transfer, registration, and license fees.
- 10 (5) When a person offers a motor vehicle for registration for the first time in this state
 11 which was registered in another state that levied a tax substantially identical to the
 12 tax levied under this section, the person shall be entitled to receive a credit against
 13 the tax imposed by this section equal to the amount of tax paid to the other state. A
 14 credit shall not be given under this subsection for taxes paid in another state if that
 15 state does not grant similar credit for substantially identical taxes paid in this state.
- 16 (6) A county clerk or other officer shall not register or issue any license tags to the
 17 owner of any motor vehicle subject to this tax, when the vehicle is then being
 18 offered for registration for the first time, unless the seller or his agent delivers to the
 19 county clerk a notarized affidavit, if required, and available under KRS 138.450
 20 attesting to the total and actual consideration paid or to be paid for the motor
 21 vehicle. If a notarized affidavit is not available, the clerk shall follow the procedures
 22 under KRS 138.450(12)(a) for new vehicles, and KRS 138.450(12)(c) or (d) for
 23 used cars. The clerk shall attach the notarized affidavit, if available, or other
 24 documentation attesting to the retail price of the vehicle as the Department of
 25 Revenue~~[Cabinet]~~ may prescribe by administrative regulation promulgated under
 26 KRS Chapter 13A to the copy of the certificate of registration and ownership mailed
 27 to the cabinet.

- 1 (7) Notwithstanding the provisions of KRS 138.450, the tax shall not be less than six
2 dollars (\$6) upon first registration of or any transfer of ownership of a motor vehicle
3 in this state, except where the vehicle is exempt from tax under KRS 138.470.
- 4 (8) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the
5 vehicle for any reason to the same dealer within sixty (60) days for a vehicle
6 replacement or a refund of the purchase price, the purchaser shall be entitled to a
7 refund of the amount of usage tax received by the Department of Revenue{
8 ~~Cabinet~~} as a result of the registration of the returned vehicle. In the case of a new
9 motor vehicle, the registration of the returned vehicle shall be canceled and the
10 vehicle shall be considered to have not been previously registered in Kentucky
11 when resold by the dealer.
- 12 (9) When a manufacturer refunds the retail purchase price or replaces a new motor
13 vehicle for the original purchaser within ninety (90) days because of malfunction or
14 defect, the purchaser shall be entitled to a refund of the amount of motor vehicle
15 usage tax received by the Department of Revenue{~~Cabinet~~} as a result of the first
16 registration. A person shall not be entitled to a refund unless he shall have filed with
17 the Department of Revenue{~~Cabinet~~} a report from the manufacturer identifying
18 the vehicle that was replaced and stating the date of replacement.
- 19 (10) Notwithstanding the time limitations of subsections (8) and (9) of this section, when
20 a dealer or manufacturer refunds the retail purchase price or replaces a motor
21 vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case
22 of a manufacturer, because ordered to do so by a dispute resolution system
23 established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to
24 a refund of the amount of motor vehicle usage tax received by the Department of
25 Revenue{~~Cabinet~~} as a result of the registration. A person shall not be entitled to a
26 refund unless he shall have filed with the Department of Revenue{~~Cabinet~~} a report
27 from the dealer or manufacturer identifying the vehicle that was replaced.

1 Section 387. KRS 138.4605 is amended to read as follows:

- 2 (1) A motor vehicle dealer who operates a service or repair component in his dealership
3 may register a motor vehicle to be used exclusively as a loaner or rental motor
4 vehicle to the customers of this service or repair department. The dealer may pay
5 usage tax on the loaner or rental motor vehicle as provided in KRS 138.460, or,
6 subject to the provisions of this section, may pay a usage tax of twenty-five dollars
7 (\$25) per month on the loaner or rental motor vehicle.
- 8 (2) A dealer shall pay the usage tax on a loaner or rental motor vehicle in the manner
9 provided by KRS 138.460 unless the dealer shows to the satisfaction of the
10 Department of Revenue~~[Cabinet]~~ that he is regularly engaged in the servicing or
11 repair of motor vehicles and loans or rents the loaner or rental motor vehicle to a
12 retail customer while the customer's motor vehicle is at the dealership for repair or
13 service.
- 14 (3) For a dealer to be eligible to pay the usage tax on a loaner or rental motor vehicle
15 under this section, the dealer shall identify the motor vehicle as a loaner or rental
16 motor vehicle to the Department of Revenue~~[Cabinet]~~ and shall maintain records,
17 as required by the Department of Revenue~~[Cabinet]~~, which show all uses of the
18 loaner or rental motor vehicle.
- 19 (4) The tax due under subsection (1) of this section shall be remitted to the Department
20 of Revenue~~[Cabinet]~~ monthly on forms prescribed by and in accordance with
21 administrative regulations promulgated by the department~~[cabinet]~~.
- 22 (5) Failure of a motor vehicle dealer to remit the taxes applicable to a loaner or rental
23 motor vehicle under this section shall be sufficient cause for the Department of
24 Revenue~~[Cabinet]~~ to revoke the authority to use that motor vehicle as a loaner or
25 rental motor vehicle and cause the usage tax on that motor vehicle to be due and
26 payable in accordance with KRS 138.460 on the retail price of that motor vehicle
27 when it was first registered as a loaner or rental motor vehicle.

1 (6) A motor vehicle no longer covered under the loaner permit program shall be taxed
 2 in the same manner as motor vehicles under KRS 138.450(12).

3 Section 388. KRS 138.464 is amended to read as follows:

4 The county clerk shall report each Monday to the Department of Revenue~~[Cabinet]~~ all
 5 moneys collected during the previous week, together with a duplicate of all receipts
 6 issued by him during the same period. The clerk shall deposit motor vehicle usage tax
 7 collections not later than the next business day following receipt in a Commonwealth of
 8 Kentucky, Department of Revenue~~[Cabinet]~~ account in a bank designated as a
 9 depository for state funds. The clerk may be required to then cause the funds to be
 10 transferred from the local depository bank to the State Treasury in whatever manner and
 11 at times prescribed by the commissioner of the Department of Revenue~~[secretary of the~~
 12 ~~Revenue Cabinet]~~ or his designee. Failure to forward duplicates of all receipts issued
 13 during the reporting period or failure to file the weekly report of moneys collected shall
 14 subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys
 15 collected during the reporting period for each month or fraction thereof until the
 16 documents are filed. Failure to deposit or, if required, transfer collections as required
 17 above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the
 18 amount not deposited or, if required, not transferred for each day until the collections are
 19 deposited or transferred as required above. The penalty for failure to deposit or transfer
 20 money collected shall not be less than fifty dollars (\$50) nor more than five hundred
 21 dollars (\$500) per day. The penalties provided in this section shall not apply if the failure
 22 of the clerk is due to reasonable cause. The department~~[cabinet]~~ may in its discretion
 23 grant a county clerk a reasonable extension of time to file his report or make any transfer
 24 of deposits as required above. The extension, however, must be requested prior to the end
 25 of the seven (7) day period and shall begin to run at the end of said period. All penalties
 26 collected under this provision shall be paid into the State Treasury as a part of the revenue
 27 collected under KRS 138.450 to 138.729.

1 Section 389. KRS 138.490 is amended to read as follows:

- 2 (1) Each person engaged in the business of conducting a race track shall furnish the
3 Department of Revenue~~[Cabinet]~~, within thirty (30) days after the end of each race
4 meeting, a report of the number of persons subject to the tax levied in KRS 138.480
5 who enter the grounds or inclosure during the race meeting. At the same time, the
6 person shall pay to the state the correct amount due by reason of the collection of
7 the tax from persons entering the grounds or inclosure of the race track.
- 8 (2) Any person who violates any provision of this section or KRS 138.480 shall be
9 subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest
10 at the tax interest rate as defined in KRS 131.010(6).

11 Section 390. KRS 138.502 is amended to read as follows:

- 12 (1) A person shall not sell or deliver untaxed diesel fuel or dyed diesel fuel when the
13 person knows or has reason to know that the fuel will be used in a motor vehicle on
14 any public highway.
- 15 (2) A person shall not introduce untaxed diesel fuel or dyed diesel fuel into the supply
16 tank of any motor vehicle licensed for highway use.
- 17 (3) A person shall not use untaxed diesel fuel or dyed diesel fuel in any motor vehicle
18 actually used on a public highway.
- 19 (4) The prohibitions contained in this section shall not apply to:
- 20 (a) Persons operating motor vehicles that have received fuel into the fuel tank
21 outside this state in a jurisdiction that permits introduction of untaxed diesel
22 fuel or dyed diesel fuel into the fuel supply tank of highway vehicles; and
- 23 (b) Uses of untaxed fuel or dyed diesel fuel on the highway which are lawful
24 under the Internal Revenue Code and regulations, including state and local
25 government vehicles, and buses, unless otherwise prohibited by this chapter.
- 26 (5) The department~~[cabinet]~~ may assess a civil penalty as follows:
- 27 (a) For first offenses, one thousand dollars (\$1,000) or ten dollars (\$10) per gallon

1 of untaxed fuel or dyed diesel fuel involved, whichever is greater, against any
 2 person who violates this section. The capacity of the fuel tank shall be
 3 assumed to be the amount of fuel involved, unless a lesser amount can be
 4 adequately verified by the violator; and

5 (b) For subsequent offenses, the penalty shall be the amount determined in
 6 paragraph (a) of this subsection, multiplied by the number of separate
 7 violations by the violator.

8 Section 391. KRS 138.530 is amended to read as follows:

9 (1) The Department of Revenue~~[Cabinet]~~ shall enforce the provisions of and collect
 10 the tax and penalties imposed and other payments required by KRS 138.510 to
 11 138.550, and in doing so it shall have the general powers and duties granted it in
 12 KRS Chapter 131 and KRS 135.050, including the power to enforce, by an action in
 13 the Franklin Circuit Court, the collection of the tax, penalties and other payments
 14 imposed or required by KRS 138.510 to 138.550.

15 (2) The remittance of the tax imposed by KRS 138.510 shall be made weekly to the
 16 Department of Revenue~~[Cabinet]~~ no later than the fifth business day, excluding
 17 Saturday and Sunday, following the close of each week of racing, during each race
 18 meeting and accompanied by reports as prescribed by the department~~[cabinet]~~. All
 19 funds received by the Department of Revenue~~[Cabinet]~~ shall be paid into the State
 20 Treasury and shall be credited to the general expenditure fund.

21 (3) The supervisor of pari-mutuel betting appointed by the Kentucky Horse Racing
 22 Authority shall weekly, during each race meeting, report to the Department of
 23 Revenue~~[Cabinet]~~ the total amount bet or handled the preceding week and the
 24 amount of tax due the state thereon, under the provisions of KRS 138.510 to
 25 138.550.

26 (4) The supervisor of pari-mutuel betting appointed by the Kentucky Horse Racing
 27 Authority or his duly authorized representatives shall, at all reasonable times, have

1 access to all books, records, issuing or vending machines, adding machines, and all
 2 other pari-mutuel equipment for the purpose of examining and checking the same
 3 and ascertaining whether or not the proper amount or amounts due the state are
 4 being or have been paid.

- 5 (5) Every person, corporation, or association required to pay the tax imposed by KRS
 6 138.510 shall keep its books and records so as to clearly show by a separate record
 7 the total amount of money contributed to every pari-mutuel pool, including daily
 8 double pools, if any.

9 Section 392. KRS 138.550 is amended to read as follows:

10 In addition to all other penalties provided in KRS 138.510 to 138.540, when the pari-
 11 mutuel system of betting is operated at a track licensed under the provisions of KRS
 12 137.170, said license may be suspended, revoked or renewal refused by the Kentucky
 13 Horse Racing Authority upon the failure of the operator to comply with the provisions of
 14 KRS 138.510 to 138.540 or the rules and regulations promulgated by the Department of
 15 Revenue~~[Cabinet]~~ pursuant thereto even though the pari-mutuel system of betting and
 16 the track are operated by different persons, corporations or associations.

17 Section 393. KRS 138.727 is amended to read as follows:

- 18 (1) Nothing in KRS 186.655 to 186.725 shall deny the right of the Department of
 19 Revenue~~[Cabinet]~~ to make audits of a taxpayer's records and accounts, even though
 20 the same taxpayer may be or should be a motor carrier and subject to investigation
 21 by the Department of Vehicle Regulation.
- 22 (2) The Department of Vehicle Regulation shall, upon request of the Department of
 23 Revenue~~[Cabinet]~~, furnish the Department of Revenue~~[Cabinet]~~ any information
 24 which it may have in its records with regard to the administration of KRS 138.655
 25 to 138.725.
- 26 (3) The Department of Vehicle Regulation shall not make any refunds to any person or
 27 company without inquiring of the Department of Revenue~~[Cabinet]~~ as to the

1 person or company being indebted to the Commonwealth of Kentucky by reason of
 2 any tax liability, and no refunds shall be made if such person or company is
 3 indebted in any fashion to the Commonwealth of Kentucky.

4 Section 394. KRS 138.810 is amended to read as follows:

5 As used in KRS 138.820 to 138.860:

- 6 (1) "Contaminated waste materials" means those materials, in solid, liquid or gaseous
 7 form, which are transported or buried with radioactive wastes;
- 8 (2) "Department"~~["Cabinet"]~~ means the Department of Revenue~~["Cabinet"]~~;
- 9 (3) "Person" includes every natural person, fiduciary, association, state or political
 10 subdivision, or corporation;
- 11 (4) "Processor" means any person receiving delivery or any person having an interest or
 12 right of occupancy or use in real property or improvements or any person owning,
 13 operating or maintaining a radioactive waste disposal site or facility of
 14 contaminated waste materials or radioactive waste materials for processing,
 15 packaging, storage, disposal, burial or other disposition;
- 16 (5) "Radioactive waste disposal site or facility" means any installation constructed,
 17 used or placed in operation primarily for disposing of contaminated waste materials
 18 or radioactive wastes;
- 19 (6) "Radioactive wastes" means any and all material which is radioactive or is
 20 contaminated by or with radioactive material including but not limited to any
 21 structures used in containing such radioactive wastes; and
- 22 (7) "Radioactive material" means any material, solid, liquid or gas, which emits
 23 radiation spontaneously.

24 Section 395. KRS 138.820 is amended to read as follows:

- 25 (1) An excise tax of ten cents (\$0.10) per pound is hereby levied and shall be paid by
 26 the processor to the department~~["cabinet"]~~ upon all contaminated waste materials and
 27 all radioactive waste material delivered in the Commonwealth of Kentucky for

1 processing, packaging, storage, disposal, burial or other disposition.

2 (2) Any person receiving contaminated waste materials or radioactive waste material or
 3 both or any person having an interest or right of occupancy or use in real property or
 4 improvements and any person owning, operating or maintaining a solid waste
 5 disposal site or facility as defined in KRS 224.01-010 upon or in which the same
 6 shall be deposited for processing, packaging, storage, disposal, burial or other
 7 disposition shall collect from the person delivering such material the tax imposed by
 8 this section.

9 (3) Every processor shall file with the department~~[cabinet]~~, on forms prescribed by the
 10 department~~[cabinet]~~, a monthly tax return. The return shall be made under penalty
 11 of perjury and shall contain such information as the department~~[cabinet]~~ may
 12 require.

13 (4) The monthly tax return shall be accompanied by remittance of the tax then due.

14 Section 396. KRS 138.830 is amended to read as follows:

15 Every processor shall maintain complete records of all deliveries of contaminated waste
 16 materials and of radioactive waste materials. Such records, together with manifests of
 17 lading, invoices, correspondence and other papers pertaining thereto shall be retained for
 18 a minimum period of two (2) years, and, if requested by the department~~[cabinet]~~, shall be
 19 made available for examination by the department~~[cabinet]~~.

20 Section 397. KRS 138.840 is amended to read as follows:

21 The department~~[cabinet]~~ may audit the books and records of each processor and make
 22 such other investigations as it deems necessary to determine the payment of tax and other
 23 requirements imposed by KRS 138.820 to 138.860.

24 Section 398. KRS 138.850 is amended to read as follows:

25 The tax returns required by KRS 138.820(3) shall be accompanied by a certified or
 26 cashier's check, payable to the state treasurer, for the amount of tax due for the preceding
 27 calendar month except that the department~~[cabinet]~~ may waive this requirement and

1 accept the check of the processor if he is of sound financial condition and has established
2 a record of compliance.

3 Section 399. KRS 138.860 is amended to read as follows:

4 The department~~[cabinet]~~ shall administer the taxes provided under KRS 138.820(1) and
5 may prescribe, adopt and enforce regulations relating to the administration and
6 enforcement thereof.

7 Section 400. KRS 138.874 is amended to read as follows:

8 (1) Except as provided in KRS 138.870 to 138.889, no offender shall engage in this
9 state in a taxable activity unless the tax imposed pursuant to KRS 138.872 has been
10 paid as evidenced by the affixing of a tax stamp, label, or other tax indicia to the
11 marijuana or controlled substance as prescribed by the Department of Revenue~~[~~
12 ~~Cabinet]~~. The tax shall be due and payable immediately upon the occurrence of the
13 taxable activity in this state. If an offender engages in a taxable activity in this state
14 involving marijuana or a controlled substance on which a tax stamp, label, or other
15 tax indicia evidencing payment of the tax imposed pursuant to KRS 138.872 has not
16 already been affixed, the offender shall immediately permanently affix the required
17 tax stamp, label, or other tax indicia.

18 (2) Tax stamps, labels, or other tax indicia required to be affixed to marijuana or
19 controlled substances shall be purchased from the Department of Revenue~~[~~
20 ~~Cabinet]~~. The purchaser shall pay one hundred percent (100%) of the face value for
21 each tax stamp, label, or other tax indicia at the time of the purchase. The
22 Department of Revenue~~[Cabinet]~~ shall maintain an inventory of tax stamps, labels,
23 or other tax indicia in denominations it deems necessary to facilitate compliance by
24 taxpayers with the provisions of this section. No purchaser of tax stamps, labels, or
25 other tax indicia pursuant to this section shall be required to give his name, address,
26 or otherwise identify himself to the Department of Revenue~~[Cabinet]~~.

27 (3) Each tax stamp, label, or other tax indicia shall be used only once and shall expire

one (1) year after issuance by the Department of Revenue~~[Cabinet]~~ to the original purchaser thereof.

Section 401. KRS 138.876 is amended to read as follows:

The Department of Revenue~~[Cabinet]~~ shall administer the provisions of KRS 138.870 to 138.889 and may adopt regulations for the administration and enforcement of KRS 138.870 to 138.889. The Department of Revenue~~[Cabinet]~~ shall adopt a uniform system for providing, affixing, and displaying tax stamps, labels, or other tax indicia required pursuant to KRS 138.874. Payments required by KRS 138.872 shall be made to the Department of Revenue~~[Cabinet]~~ in the form the Department of Revenue~~[Cabinet]~~ requires to protect the revenues of the Commonwealth.

Section 402. KRS 138.880 is amended to read as follows:

(1) Each Commonwealth's attorney or county attorney in this state who obtains a conviction of, or a guilty or Alford plea from, an offender for violating KRS Chapter 218A shall, within seventy-two (72) hours after the conviction or the plea, notify the Department of Revenue~~[Cabinet]~~ in writing if the offender has not paid the tax imposed by KRS 138.872 as evidenced by the absence of the tax stamps, labels, or other official tax indicia required to be affixed to the marijuana or controlled substance that was the subject of the conviction or plea. The weight or dosage units prescribed in this subsection shall include the weight of the marijuana or the weight or dosage units of the controlled substance, whether pure, impure, or diluted. The notice required in this subsection shall be submitted in the manner prescribed by the Department of Revenue~~[Cabinet]~~ and shall include:

- (a) The name, address, and Social Security number of the offender from whom the conviction or plea was obtained;
- (b) The type and quantity of the items that were the subject of the conviction or plea;
- (c) Any information developed during the course of the investigation regarding

1 any real or personal properties owned by the offender from whom the
2 conviction or plea was obtained; and

3 (d) Other information the Department of Revenue~~[-Cabinet]~~ may require to
4 facilitate the assessment and collection of the tax due pursuant to KRS
5 138.872.

6 (2) To facilitate collection of the tax due pursuant to KRS 138.872, the
7 Commonwealth's attorney or county attorney shall, as an authorized agent of the
8 Department of Revenue~~[-Cabinet]~~, simultaneously file a copy of the notice required
9 pursuant to subsection (1) of this section with:

10 (a) The county clerk of the county in which the conviction or the guilty or Alford
11 plea was entered;

12 (b) The county clerk of the county in which the offender resides if different from
13 the county in which the conviction or plea was entered;

14 (c) The county clerk of any other county in which the Commonwealth's attorney
15 or county attorney reasonably believes the offender from whom the conviction
16 or plea was obtained owns real or personal property; and

17 (d) Each financial institution or other custodian the Commonwealth's attorney or
18 county attorney reasonably believes possesses any funds, safe deposit box, or
19 other assets owned in whole or in part by the offender from whom the
20 conviction or plea was obtained.

21 (3) The notice required by subsection (2) of this section shall be a lien in favor of the
22 Commonwealth pursuant to KRS 134.420 to secure payment of the tax, penalty, and
23 interest due. The tax shall be and remain a lien upon the property, and all property
24 subsequently acquired, and may be enforced as other liens on similar property are
25 enforced. The lien may be released only upon written notice from the Department
26 of Revenue~~[-Cabinet]~~ that:

27 (a) The tax, penalty and interest due pursuant to KRS 138.872 and 138.889 have

1 been paid;

2 (b) A bond has been given to the Department of Revenue~~[Cabinet]~~ as provided
3 in KRS 131.150; or

4 (c) The tax, penalty, and interest are determined by the Department of Revenue~~[Cabinet]~~
5 ~~Cabinet]~~ not to be due.

6 (4) The county clerk recording or releasing a state tax lien pursuant to this section shall
7 be entitled to the fee prescribed therefor by KRS 64.012.

8 (5) Except as necessary to accept taxes that the offender voluntarily pays under KRS
9 138.874, the Department of Revenue~~[Cabinet]~~ shall not require a bond or
10 otherwise attempt to collect the tax due under KRS 138.874 until the offender's
11 taxable activity results in a conviction or a guilty or Alford plea for a violation of
12 KRS Chapter 218A. However, the Department of Revenue~~[Cabinet]~~ may impose a
13 notice of lien on issuance of a warrant or indictment, which shall be released upon
14 acquittal or dismissal of the case.

15 Section 403. KRS 138.882 is amended to read as follows:

16 (1) The tax, penalty, and interest assessed by the Department of Revenue~~[Cabinet]~~
17 pursuant to KRS 138.872 and 138.889 shall be deemed prima facie valid and
18 correctly determined and assessed. The burden shall be upon the taxpayer in any
19 judicial or administrative proceeding in this state to show their incorrectness or
20 invalidity.

21 (2) The collection provisions of KRS 131.500, and any other remedy provided by the
22 laws of the Commonwealth for collection of a tax administered by the Department
23 of Revenue~~[Cabinet]~~, shall apply with respect to the collection of the tax, penalty,
24 and interest imposed by KRS 138.872 and 138.889, but it shall not be necessary for
25 the Department of Revenue~~[Cabinet]~~ to await the expiration of the times specified
26 in KRS 131.500 to levy upon and sell any property or rights to property found
27 within the Commonwealth belonging to the offender failing to pay the tax, penalty,

1 or interest due pursuant to KRS 138.872 and 138.889.

2 (3) No person shall bring an action in any court to restrain or delay the assessment or
3 collection of any tax, penalty, or interest imposed by KRS 138.872 and 138.889.

4 (4) Notwithstanding any provision of KRS 138.870 to 138.889, or any other provision
5 of law, collection of any tax, penalty, or interest under KRS 138.872 and 138.889 or
6 imposition of any revenue liens arising as a result of KRS 138.880 shall not
7 interfere with any forfeiture of money or any other type or kind of property under
8 the drug forfeiture laws of this state, or with any distribution of property or funds
9 under the drug forfeiture laws of this state. Regardless of the order in which
10 proceedings are begun, forfeiture of money or any other type or kind of property and
11 distribution of property and funds under the drug forfeiture laws of this state shall
12 take precedence over any proceedings to collect the tax, penalty, or interest due
13 pursuant to KRS 138.872 and 138.889.

14 Section 404. KRS 138.884 is amended to read as follows:

15 For the purpose of determining the correctness of any return; determining the amount of
16 tax that should have been paid; determining whether or not the offender should have
17 made a return or paid tax; or collecting any tax, penalty, or interest under KRS 138.872
18 and 138.889, the Department of Revenue~~Cabinet~~ may examine, or cause to be
19 examined, any books, papers, records, or memoranda that may be relevant to making any
20 determinations, whether the books, papers, records, or memoranda are the property of or
21 in the possession of the offender or another person. The Department of Revenue~~Cabinet~~
22 ~~Cabinet~~ may require the attendance of any person having knowledge or information that
23 may be relevant; compel the production of books, papers, records, or memoranda by
24 persons required to attend; take testimony on matters material to the determination; and
25 administer oaths or affirmations. The Department of Revenue~~Cabinet~~ may issue
26 subpoenas which may be served by authorized agents of the Department of Revenue~~Cabinet~~
27 ~~Cabinet~~ to compel the attendance of witnesses or the production of documents, books,

1 papers, records, bank records, and any other writing or memoranda.

2 Section 405. KRS 138.886 is amended to read as follows:

3 (1) The provisions of KRS 138.870 to 138.889 shall not inculcate any person or
4 otherwise cause any person to incriminate himself in violation of his constitutional
5 rights and, notwithstanding the exceptions provided in KRS 131.190 or any other
6 law, neither the Department of Revenue~~[-Cabinet]~~ nor any public employee may
7 reveal facts contained in any report required by KRS 138.870 to 138.889, nor shall
8 any information contained in any report filed pursuant to KRS 138.870 to 138.889
9 be used against an offender in any criminal proceeding, except in connection with a
10 proceeding involving the tax, penalty, or interest due under KRS 138.872 and
11 138.889, unless the information is independently obtained. Further, possession of
12 any tax stamp, label, or other tax indicia evidencing payment of tax pursuant to
13 KRS 138.874 shall not be used against any person in any criminal proceeding.

14 (2) Any person violating this section shall be guilty of a Class B misdemeanor.

15 (3) This section shall not prohibit the Department of Revenue~~[-Cabinet]~~ from
16 publishing statistics that do not disclose the identity of offenders or the contents of
17 particular returns or reports.

18 Section 406. KRS 138.990 is amended to read as follows:

19 (1) Any person who violates any provision of KRS 138.140, 138.146, or 138.195 for
20 which a specific penalty is not provided shall be guilty of a violation for the first
21 offense; for each such subsequent offense, he shall be guilty of a Class A
22 misdemeanor. These penalties shall be in addition to the civil penalties provided by
23 KRS 138.165, 138.185, and 138.205.

24 (2) Any person who fails to supply the information required by subsection (8) of KRS
25 138.195 shall be guilty of a violation; for each subsequent offense, he shall be guilty
26 of a Class B misdemeanor. These penalties shall be in addition to any civil penalty
27 provided by KRS 138.165, 138.185, and 138.205.

- 1 (3) Any person violating subsection (10) of KRS 138.195 or any regulations adopted
2 thereunder shall be guilty of a Class A misdemeanor. This penalty shall be in
3 addition to any civil penalty provided by KRS 138.165, 138.185, and 138.205.
- 4 (4) Any person who makes a false entry upon any invoices or any record relating to the
5 purchase, possession, transportation, or sale of cigarettes, and presents any such
6 false entry to the department~~cabinet~~ or any of its agents with the intent to avoid
7 any tax imposed by KRS 138.130 to 138.205, shall be guilty of a Class D felony.
- 8 (5) Any person who shall counterfeit any cigarette tax evidence shall be guilty of a
9 Class D felony.
- 10 (6) Any person who sells, offers to sell, or uses counterfeit cigarette tax evidence,
11 affixed or unaffixed, with the intention of evading any tax imposed by KRS
12 138.130 to 138.205 shall be guilty of a Class D felony.
- 13 (7) Any person who fails to remit gasoline or special fuel tax money to the state as
14 provided in KRS 138.280 is guilty of embezzlement of state funds. Embezzlement
15 of state funds, for the first offense, shall be a Class A misdemeanor, and for the
16 second offense, shall be a Class D felony.
- 17 (8) Any person who violates any of the provisions of KRS 138.300 shall be guilty of a
18 Class A misdemeanor. This penalty shall be in addition to the penalty provided in
19 subsection (7) of this section.
- 20 (9) Any person who violates KRS 138.310 shall be guilty of a Class A misdemeanor.
21 Each day or part of a day of doing business as a dealer without an uncanceled
22 license shall be a separate offense.
- 23 (10) (a) Any person who willfully and fraudulently gives a false statement as to the
24 total and actual consideration paid for a motor vehicle under KRS 138.450
25 shall be guilty of a Class D felony and shall be fined not less than two
26 thousand dollars (\$2,000) per offense.
- 27 (b) Any person who violates any of the other provisions of KRS 138.460 to

1 138.470 shall be fined not less than twenty-five dollars (\$25) nor more than
2 one thousand dollars (\$1,000) and if the offender is an individual, he shall be
3 guilty of a Class A misdemeanor.

4 (11) Any person who violates any of the provisions of KRS 138.480 or 138.490 shall be
5 guilty of a Class B misdemeanor.

6 (12) If any offender under the provisions of subsections (1) to (9), (11) or (16) of this
7 section is a corporation, the principal officer or the officer directly responsible for
8 the violation, or both, may be imprisoned as provided in those subsections.

9 (13) Any person who violates any provision of subsection (1) of KRS 138.354, whether
10 or not his permit has been revoked, shall be guilty of a Class A misdemeanor.

11 (14) Any person violating any provision of KRS 138.655 to 138.725 is guilty of a Class
12 A misdemeanor.

13 (15) In addition to the penalties provided in KRS 138.990(14), the motor vehicle or
14 vehicles of any person violating any provision of KRS 138.720 shall be subject to
15 seizure by any officer duly authorized to enforce the provisions of KRS 138.655 to
16 138.725.

17 (16) Any person violating KRS 138.175 shall be guilty of a Class D felony.

18 (17) Any person who intentionally evades payment of the tax imposed by KRS 138.460
19 or 138.463 shall be liable for the taxes evaded, with applicable interest and
20 penalties, and in addition shall be guilty of:

21 (a) A Class B misdemeanor if the amount of tax evaded is two hundred fifty
22 dollars (\$250) or less; and

23 (b) A Class A misdemeanor if the amount of tax evaded is greater than two
24 hundred fifty dollars (\$250).

25 Section 407. KRS 139.025 is amended to read as follows:

26 The Department of Revenue~~[-Cabinet]~~ may promulgate administrative regulations
27 providing for the reporting of gross receipts and payment of taxes levied by this chapter

1 on a basis other than accrual.

2 Section 408. KRS 139.110 is amended to read as follows:

3 (1) "Retailer" means:

4 (a) Every person engaged in the business of making retail sales or furnishing any
5 services included in KRS 139.200;

6 (b) Every person engaged in the business of making sales at auction of tangible
7 personal property owned by the person or others for storage, use or other
8 consumption;

9 (c) Every person making more than two (2) retail sales during any twelve (12)
10 month period, including sales made in the capacity of assignee for the benefit
11 of creditors, or receiver or trustee in bankruptcy;

12 (d) Any person conducting a race meeting under the provision of KRS Chapter
13 230, with respect to horses which are claimed during the meeting.

14 (2) When the department~~[cabinet]~~ determines that it is necessary for the efficient
15 administration of this chapter to regard any salesmen, representatives, peddlers, or
16 canvassers as the agents of the dealers, distributors, supervisors or employers under
17 whom they operate or from whom they obtain the tangible personal property sold by
18 them, irrespective of whether they are making sales on their own behalf or on behalf
19 of the dealers, distributors, supervisors or employers, the department~~[cabinet]~~ may
20 so regard them and may regard the dealers, distributors, supervisors or employers as
21 retailers for purposes of this chapter.

22 Section 409. KRS 139.180 is amended to read as follows:

23 "Taxpayer" means any person liable for tax under this chapter; "department"~~["cabinet"]~~
24 means the Department of Revenue~~[Cabinet]~~.

25 Section 410. KRS 139.210 is amended to read as follows:

26 (1) Except as provided in subsection (2) of this section, the tax shall be required to be
27 collected by the retailer from the purchaser. If the taxable goods are bundled with

1 services and are sold as a single package for one (1) price, the tax required to be
 2 collected by the retailer from the purchaser shall be computed on the entire amount.
 3 The tax shall be displayed separately from the sales price, the price advertised in the
 4 premises, the marked price, or other price on the sales receipt or other proof of
 5 sales.

6 (2) The department~~[cabinet]~~ may relieve certain retailers from the provisions of
 7 subsection (1) of this section of separate display of the tax when the circumstances
 8 of the retailer make compliance impracticable. If the retailer establishes to the
 9 satisfaction of the department~~[cabinet]~~ that the sales tax has been added to the total
 10 amount of the sales price and has not been absorbed by the retailer, the amount of
 11 the sales price shall be the amount received exclusive of the tax imposed.

12 (3) The taxes collected under this section shall be deemed to be held in trust by the
 13 retailer for and on account of the Commonwealth of Kentucky.

14 (4) The taxes to be collected under this section shall constitute a debt of the retailer to
 15 the Commonwealth.

16 Section 411. KRS 139.240 is amended to read as follows:

17 (1) Every person presently engaged or desiring to engage in or conduct business as a
 18 retailer or seller within this state shall file with the department~~[cabinet]~~ an
 19 application for a permit for each place of business.

20 (2) Every application for a permit shall:

- 21 (a) Be made upon a form prescribed by the department~~[cabinet]~~;
- 22 (b) Set forth the name under which the applicant transacts or intends to transact
 23 business and the location of the place or places of business; and
- 24 (c) Set forth other information as the department~~[cabinet]~~ may require.

25 (3) The application shall be signed by:

- 26 (a) The owner, if he or she is a natural person;
- 27 (b) A member or partner, if the entity is an association, limited liability company,

1 limited liability partnership, or partnership;

2 (c) An executive officer, if the entity is a corporation, or some person specifically
3 authorized by the corporation to sign the application, to which shall be
4 attached written evidence of his or her authority; or

5 (d) A licensed certified public accountant, or an attorney licensed to practice law
6 in the Commonwealth of Kentucky, specifically authorized by and acting on
7 behalf of an owner, an association, a partnership, a limited liability company,
8 a limited liability partnership, a corporation, or other business entity.

9 (4) A written signature shall not be required if the applicant registers electronically.

10 Section 412. KRS 139.250 is amended to read as follows:

11 After compliance with KRS 139.240 and 139.660 by the applicant, the
12 department~~[cabinet]~~ shall grant and issue to each applicant a separate permit for each
13 place of business within the state. A permit shall not be assignable, and shall be valid
14 only for the person in whose name it is issued and for the transaction of business at the
15 place designated therein. It shall at all times be conspicuously displayed at the place for
16 which issued.

17 Section 413. KRS 139.260 is amended to read as follows:

18 For the purpose of the proper administration of this chapter and to prevent evasion of the
19 duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that
20 all gross receipts and all tangible personal property sold by any person for delivery in this
21 state are subject to the tax until the contrary is established. The burden of proving the
22 contrary is upon the person who makes the sale unless he takes from the purchaser a
23 certificate to the effect that the property is either:

24 (1) Purchased for resale according to the provisions of KRS 139.270;

25 (2) Purchased through a properly executed certificate of exemption in accordance with
26 KRS 139.270;

27 (3) Purchased according to regulations of the Department of Revenue~~[-Cabinet]~~

1 governing a direct pay authorization; or

2 (4) Purchased under a form issued pursuant to KRS 139.776 or 139.777.

3 Section 414. KRS 139.270 is amended to read as follows:

4 (1) The resale certificate or certificate of exemption relieves the retailer or seller from
5 the burden of proof only if taken in good faith from a person who, at the time of
6 purchasing the tangible personal property:

7 (a) Indicates an intention to sell it in the regular course of business by executing
8 the resale certificate; or

9 (b) Indicates that the property purchased will be used in an exempt manner by
10 executing a certificate of exemption.

11 This relief from liability does not apply to a retailer or seller who fraudulently fails
12 to collect the tax or solicits purchasers to participate in the unlawful claiming of an
13 exemption.

14 (2) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:

15 (a) Accepts a properly completed resale certificate or certificate of exemption;
16 and

17 (b) Maintains a file of the certificate in accordance with KRS 139.720.

18 (3) If the department~~[cabinet]~~ later finds that the retailer or seller exercised good faith
19 according to the provisions of subsection (2) of this section but that the purchaser
20 used the property in a manner that would not have qualified for resale status or the
21 purchaser issued a certificate of exemption and used the property in some other
22 manner or for some other purpose, the department~~[cabinet]~~ shall hold the purchaser
23 liable for the remittance of the tax and may apply penalties provided in KRS
24 139.990.

25 Section 415. KRS 139.280 is amended to read as follows:

26 (1) The resale certificate shall:

27 (a) Be signed by and bear the name and address of the purchaser;

- 1 (b) Indicate the number of the permit issued to the purchaser;
- 2 (c) Indicate the general character of the tangible personal property sold by the
- 3 purchaser in the regular course of business.

4 (2) The certificate shall be substantially in a form as the department~~[cabinet]~~ may
5 prescribe.

6 (3) A signature shall not be required if the purchaser provides the retailer with an
7 electronic resale certificate.

8 Section 416. KRS 139.320 is amended to read as follows:

9 (1) The use tax of six percent (6%) is hereby levied upon the storage, use, or other
10 consumption in this state of any machines, machinery, tools, or other equipment
11 brought, imported or caused to be brought into this state for use in constructing,
12 building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer
13 or water system, drainage, or dredging system, electric or steam railway system,
14 reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf,
15 excavation, grading, or other improvement or structures, or any part thereof. The
16 owner or, if the property is leased the lessee of any such machine, machinery, tools,
17 or other equipment shall be liable for the tax provided for in this chapter, to be
18 computed as set out below. The useful life of such machines, tools, or other
19 equipment shall be determined by the department~~[cabinet]~~ in accordance with the
20 depreciable value permitted under KRS Chapter 141 and regulations issued
21 pursuant thereto. Said use tax shall be computed on the basis of such proportion of
22 the original purchase price of such property as the duration of time of use in this
23 state bears to the total useful life. Such tax shall become due immediately upon such
24 property's being brought into this state, and in the absence of satisfactory evidence
25 as to the period of use intended in this state, it shall be presumed that such property
26 will remain in this state for the remainder of its useful life.

27 (2) The provisions of this section shall not be applicable with respect to sales of such

property within this state or to the use, storage, or consumption of such property when purchased for use in this state, and in such cases the full sales or use tax shall be paid as in all other cases, irrespective of the period of intended use in this state.

- (3) For the purposes of this section, the total useful life of property which is fully depreciated at the time of being brought into this state or becomes fully depreciated while in use in this state shall be extended to include the time of use in this state. In the absence of satisfactory evidence as to the period of use in this state, the tax shall be computed on an annual basis and shall be paid as provided by KRS 139.540.

Section 417. KRS 139.330 is amended to read as follows:

Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the use tax levied under KRS 139.310. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the department~~cabinet~~, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purpose of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to KRS 139.340 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Section 418. KRS 139.340 is amended to read as follows:

- (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business in this state shall collect the tax imposed by KRS 139.310 from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the department~~cabinet~~. The taxes collected or required to be collected by the retailer under this section shall be deemed to be held in trust for and on account of the Commonwealth of Kentucky.
- (2) "Retailer engaged in business in this state" as used in this chapter includes any of the following:

- 1 (a) Any retailer maintaining, occupying, or using, permanently or temporarily,
2 directly or indirectly, or through a subsidiary, or agent, by whatever name
3 called, an office, place of distribution, sales or sample room or place,
4 warehouse or storage place, or other place of business. Property owned by a
5 person who has contracted with a printer for printing, which consists of the
6 final printed product, property which becomes a part of the final printed
7 product, or copy from which the printed product is produced, and which is
8 located at the premises of the printer, shall not be deemed to be an office,
9 place of distribution, sales or sample room or place, warehouse or storage
10 place, or other place of business maintained, occupied, or used by the person;
- 11 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor
12 operating in this state under the authority of the retailer or its subsidiary for
13 the purpose of selling, delivering, or the taking of orders for any tangible
14 personal property. An unrelated printer with which a person has contracted for
15 printing shall not be deemed to be a representative, agent, salesman,
16 canvasser, or solicitor for the person;
- 17 (c) Any retailer soliciting orders for tangible personal property from residents of
18 this state on a continuous, regular, or systematic basis in which the solicitation
19 of the order, placement of the order by the customer or the payment for the
20 order utilizes the services of any financial institution, telecommunication
21 system, radio or television station, cable television service, print media, or
22 other facility or service located in this state;
- 23 (d) Any retailer deriving receipts from the lease or rental of tangible personal
24 property situated in this state; or
- 25 (e) Any retailer soliciting orders for tangible personal property from residents of
26 this state on a continuous, regular, systematic basis if the retailer benefits from
27 an agent operating in this state under the authority of the retailer to repair or

1 service tangible personal property sold by the retailer.

2 Section 419. KRS 139.390 is amended to read as follows:

3 Every retailer selling tangible personal property for storage, use or other consumption in
4 this state shall register with the department~~[cabinet]~~ and give:

- 5 (1) The name and address of all agents operating in this state;
- 6 (2) The location of all distribution or sales houses or offices or other places of business
7 in this state;
- 8 (3) Such other information as the department~~[cabinet]~~ may require.

9 Section 420. KRS 139.470 is amended to read as follows:

10 There are excluded from the computation of the amount of taxes imposed by this chapter:

- 11 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this
12 state of, tangible personal property which this state is prohibited from taxing under
13 the Constitution or laws of the United States, or under the Constitution of this state;
- 14 (2) Gross receipts from sales of, and the storage, use, or other consumption in this state
15 of:
 - 16 (a) Nonreturnable and returnable containers when sold without the contents to
17 persons who place the contents in the container and sell the contents together
18 with the container; and
 - 19 (b) Returnable containers when sold with the contents in connection with a retail
20 sale of the contents or when resold for refilling;

21 As used in this section the term "returnable containers" means containers of a kind
22 customarily returned by the buyer of the contents for reuse. All other containers are
23 "nonreturnable containers";

- 24 (3) Gross receipts from the sale of, and the storage, use, or other consumption in this
25 state of, tangible personal property used for the performance of a lump-sum, fixed-
26 fee contract of public works executed prior to February 5, 1960;
- 27 (4) Gross receipts from occasional sales of tangible personal property and the storage,

- 1 use, or other consumption in this state of tangible personal property, the transfer of
 2 which to the purchaser is an occasional sale;
- 3 (5) Gross receipts from sales of tangible personal property to a common carrier,
 4 shipped by the retailer via the purchasing carrier under a bill of lading, whether the
 5 freight is paid in advance or the shipment is made freight charges collect, to a point
 6 outside this state and the property is actually transported to the out-of-state
 7 destination for use by the carrier in the conduct of its business as a common carrier;
- 8 (6) Gross receipts from sales of tangible personal property sold through coin-operated
 9 bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the
 10 retailer is primarily engaged in making the sales and maintains records satisfactory
 11 to the cabinet. As used in this subsection, "bulk vending machine" means a vending
 12 machine containing unsorted merchandise which, upon insertion of a coin,
 13 dispenses the same in approximately equal portions, at random and without
 14 selection by the customer;
- 15 (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or
 16 other statutory or constitutional agency of the state and gross receipts from sales to
 17 counties, cities, or special districts as defined in KRS 65.005. This exemption shall
 18 apply only to purchases of property or services for use solely in the government
 19 function. A purchaser not qualifying as a governmental agency or unit shall not be
 20 entitled to the exemption even though the purchaser may be the recipient of public
 21 funds or grants;
- 22 (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky
 23 residents for use in heating, water heating, cooking, lighting, and other
 24 residential uses. As used in this subsection, "fuel" shall include but not be
 25 limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.
 26 Determinations of eligibility for the exemption shall be made by the
 27 Department of Revenue~~Cabinet~~;

- 1 (b) In making the determinations of eligibility, the department~~[cabinet]~~ shall
 2 exempt from taxation all gross receipts derived from sales:
- 3 1. Classified as "residential" by a utility company as defined by applicable
 4 tariffs filed with and accepted by the Public Service Commission;
 - 5 2. Classified as "residential" by a municipally owned electric distributor
 6 which purchases its power at wholesale from the Tennessee Valley
 7 Authority;
 - 8 3. Classified as "residential" by the governing body of a municipally owned
 9 electric distributor which does not purchase its power from the
 10 Tennessee Valley Authority, if the "residential" classification is
 11 reasonably consistent with the definitions of "residential" contained in
 12 tariff filings accepted and approved by the Public Service Commission
 13 with respect to utilities which are subject to Public Service Commission
 14 regulation.
- 15 If the service is classified as residential, use other than for "residential"
 16 purposes by the customer shall not negate the exemption;
- 17 (c) The exemption shall not apply if charges for sewer service, water, and fuel are
 18 billed to an owner or operator of a multi-unit residential rental facility or
 19 mobile home and recreational vehicle park other than residential
 20 classification; and
- 21 (d) The exemption shall apply also to residential property which may be held by
 22 legal or equitable title, by the entireties, jointly, in common, as a
 23 condominium, or indirectly by the stock ownership or membership
 24 representing the owner's or member's proprietary interest in a corporation
 25 owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- 26 (9) Any rate increase for school taxes and any other charges or surcharges added to the
 27 total amount of a residential telephone bill;

- 1 (10) Gross receipts from sales to an out-of-state agency, organization, or institution
 2 exempt from sales and use tax in its state of residence when that agency,
 3 organization, or institution gives proof of its tax-exempt status to the retailer and the
 4 retailer maintains a file of the proof;
- 5 (11) Gross receipts derived from the sale of, and the storage, use, or other consumption
 6 in this state of, tangible personal property to be used in the manufacturing or
 7 industrial processing of tangible personal property at a plant facility and which will
 8 be for sale. The property shall be regarded as having been purchased for resale.
 9 "Plant facility" shall have the same meaning as defined in KRS 139.170(3). For
 10 purposes of this subsection, a manufacturer or industrial processor includes an
 11 individual or business entity that performs only part of the manufacturing or
 12 industrial processing activity and the person or business entity need not take title to
 13 tangible personal property that is incorporated into, or becomes the product of, the
 14 activity.
- 15 (a) Industrial processing includes refining, extraction of petroleum and natural
 16 gas, mining, quarrying, fabricating, and industrial assembling. As defined
 17 herein, tangible personal property to be used in the manufacturing or industrial
 18 processing of tangible personal property which will be for sale shall mean:
- 19 1. Materials which enter into and become an ingredient or component part
 20 of the manufactured product.
 - 21 2. Other tangible personal property which is directly used in manufacturing
 22 or industrial processing, if the property has a useful life of less than one
 23 (1) year. Specifically these items are categorized as follows:
 - 24 a. Materials. This refers to the raw materials which become an
 25 ingredient or component part of supplies or industrial tools exempt
 26 under subdivisions b. and c. below.
 - 27 b. Supplies. This category includes supplies such as lubricating and

1 compounding oils, grease, machine waste, abrasives, chemicals,
2 solvents, fluxes, anodes, filtering materials, fire brick, catalysts,
3 dyes, refrigerants, explosives, etc. The supplies indicated above
4 need not come in direct contact with a manufactured product to be
5 exempt. "Supplies" does not include repair, replacement, or spare
6 parts of any kind.

7 c. Industrial tools. This group is limited to hand tools such as jigs,
8 dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc.,
9 and to tools attached to a machine such as molds, grinding balls,
10 grinding wheels, dies, bits, cutting blades, etc. Normally, for
11 industrial tools to be considered directly used in manufacturing,
12 they shall come into direct contact with the product being
13 manufactured.

14 3. Materials and supplies that are not reusable in the same manufacturing
15 process at the completion of a single manufacturing cycle, excluding
16 repair, replacement, or spare parts of any kind. A single manufacturing
17 cycle shall be considered to be the period elapsing from the time the raw
18 materials enter into the manufacturing process until the finished product
19 emerges at the end of the manufacturing process.

20 (b) It shall be noted that in none of the three (3) categories is any exemption
21 provided for repair, replacement, or spare parts. Repair, replacement, or spare
22 parts shall not be considered to be materials, supplies, or industrial tools
23 directly used in manufacturing or industrial processing. "Repair, replacement,
24 or spare parts" shall have the same meaning as set forth in KRS 139.170;

25 (12) Any water use fee paid or passed through to the Kentucky River Authority by
26 facilities using water from the Kentucky River basin to the Kentucky River
27 Authority in accordance with KRS 151.700 to 151.730 and administrative

1 regulations promulgated by the authority;

2 (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage,
3 use, or other consumption outside this state and delivered by the retailer's own
4 vehicle to a location outside this state, or delivered to the United States Postal
5 Service, a common carrier, or a contract carrier for delivery outside this state,
6 regardless of whether the carrier is selected by the purchaser or retailer or an agent
7 or representative of the purchaser or retailer, or whether the F.O.B. is retailer's
8 shipping point or purchaser's destination.

9 (a) As used in this subsection:

10 1. "Catalogs" means tangible personal property that is printed to the special
11 order of the purchaser and composed substantially of information
12 regarding goods and services offered for sale; and

13 2. "Newspaper inserts" means printed materials that are placed in or
14 distributed with a newspaper of general circulation.

15 (b) The retailer shall be responsible for establishing that delivery was made to a
16 non-Kentucky location through shipping documents or other credible evidence
17 as determined by the cabinet;

18 (14) Gross receipts from the sale of water used in the raising of equine as a business;

19 (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and
20 purchased for storage, use, or other consumption outside this state and delivered by
21 the retailer's own vehicle to a location outside this state, or delivered to the United
22 States Postal Service, a common carrier, or a contract carrier for delivery outside
23 this state, regardless of whether the carrier is selected by the purchaser or retailer or
24 an agent or representative of the purchaser or retailer, or whether the F.O.B. is the
25 retailer's shipping point or the purchaser's destination.

26 (a) As used in this subsection, "metal retail fixtures" means check stands and
27 belted and nonbelted checkout counters, whether made in bulk or pursuant to

1 specific purchaser specifications, that are to be used directly by the purchaser
2 or to be distributed by the purchaser.

3 (b) The retailer shall be responsible for establishing that delivery was made to a
4 non-Kentucky location through shipping documents or other credible evidence
5 as determined by the cabinet;

6 (16) Gross receipts from the sale of unenriched or enriched uranium purchased for
7 ultimate storage, use, or other consumption outside this state and delivered to a
8 common carrier in this state for delivery outside this state, regardless of whether the
9 carrier is selected by the purchaser or retailer, or is an agent or representative of the
10 purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or
11 purchaser's destination;

12 (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown"
13 means an agreement whereby an amount, whether paid in money, credit, or
14 otherwise, is received by a retailer from a manufacturer or wholesaler based upon
15 the quantity and unit price of tobacco products sold at retail that requires the retailer
16 to reduce the selling price of the product to the purchaser without the use of a
17 manufacturer's or wholesaler's coupon or redemption certificate;

18 (18) Gross receipts from the sale of property returned by a purchaser when the full sales
19 price is refunded either in cash or credit. This exclusion shall not apply if the
20 purchaser, in order to obtain the refund, is required to purchase other property at a
21 price greater than the amount charged for the property that is returned;

22 (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS
23 Chapter 138;

24 (20) The amount of any tax imposed by the United States upon or with respect to retail
25 sales, whether imposed on the retailer or the consumer, not including any
26 manufacturer's excise or import duty;

27 (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which

1 is registered for use on the public highways and upon which any applicable tax
2 levied by KRS 138.460 has been paid;

3 (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and
4 trailer as defined in KRS 189.010(17); and

5 (23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not
6 consumed on the premises licensed for their sale under the provisions of KRS
7 Chapter 243.

8 Section 421. KRS 139.505 is amended to read as follows:

9 (1) For the purpose of this section, "gross receipts" means:

10 (a) Sales of tangible personal property in this state if:

11 1. The property is delivered or shipped to a purchaser, other than the
12 United States government, or to the designee of the purchaser within this
13 state regardless of the f.o.b. point or other conditions of the sale; or

14 2. The property is shipped from an office, store, warehouse, factory, or
15 other place of storage in this state and the purchaser is the United States
16 government; and

17 (b) Sales other than sales of tangible personal property in this state if the income-
18 producing activity is performed in this state; or the income-producing activity
19 is performed both in and outside this state and a greater proportion of the
20 income-producing activity is performed in this state than in any other state,
21 based on cost of performance, or gross receipt allocation method as provided
22 by statute and elected by the taxpayer.

23 (2) Any business whose communications service, subject to the sales tax imposed under
24 KRS Chapter 139 and deducted for federal income tax purposes, exceeds five
25 percent (5%) of the business's Kentucky gross receipts during the preceding
26 calendar year is entitled to a refundable credit. The refundable credit shall be equal
27 to the sales tax paid on the difference by which the communications service

1 purchased by the business exceeds five percent (5%) of the business's Kentucky
2 gross receipts.

3 (3) Any business that qualifies for the refundable credit authorized by subsection (2) of
4 this section shall make an annual application for the refund on or after June 1, 2002,
5 and on or after every June 1 thereafter. The application shall be made to the
6 department~~[cabinet]~~ on forms as the department~~[cabinet]~~ may prescribe and shall
7 contain any information deemed necessary for the department~~[cabinet]~~ to determine
8 the business's eligibility to receive a refund.

9 (4) Notwithstanding the provisions of KRS 134.580 to the contrary, the
10 department~~[cabinet]~~, upon receipt of a properly documented refund application,
11 shall cause a timely refund to be made directly to the business. Interest shall not be
12 allowed or paid on any refund made under this section.

13 (5) Any refund application submitted under this section is subject to examination by the
14 department~~[cabinet]~~. The examination shall occur within four (4) years from the
15 date the refund application is received by the department~~[cabinet]~~. Any
16 overpayment resulting from the examination shall be repaid to the State Treasury. In
17 addition, the amount required to be repaid is subject to the interest provisions of
18 KRS 131.183 and to the penalty provisions of KRS 131.180.

19 (6) If a business owns directly or indirectly fifty percent (50%) or more of another
20 business, the credit computed under subsection (2) of this section shall be computed
21 on a combined basis, excluding any intercompany Kentucky gross receipts.

22 Section 422. KRS 139.510 is amended to read as follows:

23 (1) The tax levied by KRS 139.310 shall not apply with respect to the storage, use, or
24 other consumption of tangible personal property in this state upon which a tax
25 substantially identical to the tax levied under KRS 139.200 (not including any
26 special excise taxes such as are imposed on alcoholic beverages, cigarettes, and the
27 like) equal to or greater than the amount of tax imposed by KRS 139.310 has been

1 paid in another state. Proof of payment of such tax shall be according to rules and
 2 regulations of the department~~[cabinet]~~. If the amount of tax paid in another state is
 3 not equal to or greater than the amount of tax imposed by KRS 139.310, then the
 4 taxpayer shall pay to the department~~[cabinet]~~ an amount sufficient to make the tax
 5 paid in the other state and in this state equal to the amount imposed by KRS
 6 139.310. No credit shall be given under this section for sales taxes paid in another
 7 state if that state does not grant credit for sales taxes paid in this state.

- 8 (2) To prevent actual multistate taxation of a communications service subject to
 9 taxation under this chapter, any provider or purchaser, upon proof that the provider
 10 or purchaser has paid a tax in another state on the same communications services,
 11 shall be allowed a credit against the tax imposed by this chapter to the extent of the
 12 amount of the tax legally paid in the other state.

13 Section 423. KRS 139.536 is amended to read as follows:

- 14 (1) In consideration of the execution of the agreement as defined in KRS 148.851 and
 15 notwithstanding any provision of KRS 139.770 to the contrary, the approved
 16 company as defined in KRS 148.851 excluding its lessees, may be granted a sales
 17 tax refund from the Kentucky sales tax imposed by KRS 139.200 on the sales
 18 generated by or arising at the tourism attraction project as defined in KRS 148.851.
 19 The approved company shall have no obligation to refund or otherwise return any
 20 amount of this sales tax refund to the persons from whom the sales tax was
 21 collected. The term of the agreement granting the sales tax refund shall be ten (10)
 22 years, and this time period shall commence on the later of:
- 23 (a) The final approval for purposes of the inducements; or
 - 24 (b) The completion date specified in the agreement.
- 25 (2) Any sales tax collected by an approved company as defined in KRS 148.851 on
 26 sales transacted after final approval but prior to the commencement of the term of
 27 the agreement, including any approved company that has received final approval

1 prior to July 15, 2000, shall be refundable as if collected after the commencement of
 2 the term and applied to the approved company's first fiscal year's refund after
 3 activation of the term and without changing the term.

4 (3) The total sales tax refund allowed to the approved company over the term of the
 5 agreement in subsection (1) of this section shall be equal to the lesser of the total
 6 amount of the sales tax liability of the approved company and its lessees or twenty-
 7 five percent (25%) of the approved costs. The sales tax refund shall accrue over the
 8 term of the agreement in an annual amount equal to two and one-half percent
 9 (2.5%) of the approved cost. Notwithstanding the foregoing two and one-half
 10 percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9)
 11 from a previous year may be carried forward to any succeeding year during the term
 12 of the agreement until the entire twenty-five percent (25%) of the approved costs
 13 have been received through sales tax refunds. By October 1 of each year the
 14 Department of Revenue~~[Cabinet]~~ shall certify to the authority and the secretary of
 15 the Tourism Development Cabinet for the preceding fiscal year for all approved
 16 companies for which sales tax returns were filed with respect to a tourism attraction
 17 project, the sales tax liability of the approved companies receiving inducements
 18 under this section and KRS 148.851 to 148.860, and their lessees, and the amount
 19 of the sales tax refunds issued pursuant to subsection (1) of this section.

20 (4) Interest shall not be allowed or paid on any refund made under the provisions of this
 21 section.

22 (5) The Department of Revenue~~[Cabinet]~~ may promulgate administrative regulations
 23 and require the filing of forms designed by the Department of Revenue~~[Cabinet]~~ to
 24 reflect the intent of this section and KRS 148.851 to 148.860.

25 Section 424. KRS 139.5381 is amended to read as follows:

26 As used in KRS 139.5382 to 139.5386 and 139.990(5), unless the context requires
 27 otherwise:

- 1 (1) "Department"~~["Cabinet"]~~ means the Kentucky Department of Revenue~~["Cabinet"]~~;
- 2 (2) "Motion picture production company" means a company engaged in the business of
- 3 producing motion pictures intended for a theatrical release or for exhibition on
- 4 national television either by a network or for national syndication, or television
- 5 programs which will serve as a pilot for or a segment of a nationally televised
- 6 dramatic series, either by a network or for national syndication;
- 7 (3) "Financial institution" means any bank or savings and loan institution in the
- 8 Commonwealth which carries FDIC or FSLIC insurance; and
- 9 (4) "Secretary" means the secretary of the Kentucky Finance and Administration
- 10 Cabinet.

11 Section 425. KRS 139.5382 is amended to read as follows:

- 12 (1) Any motion picture production company that intends to film all, or parts of, a
- 13 motion picture in Kentucky and desires to receive the credit provided for in KRS
- 14 139.5382 to 139.5386 shall, prior to the commencement of filming:
- 15 (a) Provide the Department of Revenue~~["Cabinet"]~~ with the address of a Kentucky
- 16 location at which records of expenditures qualifying for the tax credit will be
- 17 maintained, and with the name of the individual maintaining such records; and
- 18 (b) File an application for the tax credit provided for in KRS 139.5382 to
- 19 139.5386 within sixty (60) days after the completion of filming or production
- 20 in Kentucky. The application shall include a final expenditure report
- 21 providing documentation for expenditures in accordance with regulations
- 22 promulgated by the Department of Revenue~~["Cabinet"]~~.
- 23 (2) To qualify as a basis for the financial incentive, expenditures must be made by
- 24 check drawn upon any Kentucky financial institution.
- 25 (3) The twelve (12) month period, during which expenditures may qualify for the tax
- 26 credit provided by KRS 139.5382 to 139.5386, shall begin on the date of the earliest
- 27 expenditure reported.

1 Section 426. KRS 139.5384 is amended to read as follows:

- 2 (1) The **Department of** Revenue~~[-Cabinet]~~ shall, within sixty (60) days following the
3 receipt of an application for a credit for sales and use tax paid, calculate the total
4 expenditures of the motion picture production company for which there is
5 documentation for funds expended in the Commonwealth, calculate the amount of
6 credit to which the applicant is entitled, and certify the same to the secretary of the
7 Finance and Administration Cabinet. In the case of an audit, as provided for in KRS
8 139.5386, the **Department of** Revenue~~[-Cabinet]~~ shall certify the amount of the
9 credit due to the secretary within one hundred eighty (180) days following the
10 receipt of the motion picture production company's application.
- 11 (2) Upon receipt of the certification of the amount thereof from the **Department of**
12 Revenue~~[-Cabinet]~~, the secretary shall cause the refund of sales taxes paid to be
13 remitted to the motion picture production company. For purposes of payment and
14 funding thereof, the credit provided in KRS 139.5382 to 139.5386 shall be paid in
15 the same manner as other claims on the State Treasury are paid. They shall not be
16 charged against any appropriation, but shall be deducted from tax receipts for the
17 current fiscal year.
- 18 (3) The sales and use taxes paid by the motion picture production company for which a
19 refundable tax credit is granted shall be deemed not to have been legally paid into
20 the State Treasury, and the refund of the credit shall not be in violation of Section
21 59 of the Kentucky Constitution.

22 Section 427. KRS 139.5385 is amended to read as follows:

- 23 (1) Any tax credit, or part thereof, paid to a motion picture production company as a
24 result of error by the **Department of** Revenue~~[-Cabinet]~~ shall be repaid by such
25 company to the secretary of the Finance and Administration Cabinet.
- 26 (2) Any tax credit, or part thereof, paid to a motion picture production company as a
27 result of error or fraudulent statements made by the motion picture production

1 company, shall be repaid by such company to the secretary of the Finance and
 2 Administration Cabinet, together with interest, at the tax interest rate provided for
 3 in KRS 131.010(6).

4 Section 428. KRS 139.5386 is amended to read as follows:

5 (1) The Department of Revenue~~[-Cabinet]~~ may require that reported expenditures and
 6 the application for the tax credit from a motion picture production company be
 7 subjected to an audit by the Department of Revenue~~[-Cabinet]~~ auditors to verify
 8 expenditures.

9 (2) For companies in the business of producing films or television shows other than
 10 those which would qualify them for the credit under the definition of "motion
 11 picture production company" in KRS 139.5381, the department~~[-cabinet]~~ may
 12 require separate accounting records for the reporting of expenditures made in
 13 connection with the application for a refundable tax credit.

14 (3) The Department of Revenue~~[-Cabinet]~~ shall promulgate appropriate administrative
 15 regulations to carry out the intent and purposes of KRS 139.5382 to 139.5386.

16 Section 429. KRS 139.540 is amended to read as follows:

17 The taxes imposed by this chapter are due and payable to the department~~[-cabinet]~~
 18 monthly and shall be remitted on or before the twentieth day of the next succeeding
 19 calendar month.

20 Section 430. KRS 139.550 is amended to read as follows:

21 (1) On or before the twentieth day of the month following each calendar month, a
 22 return for the preceding month shall be filed with the department~~[-cabinet]~~ in a form
 23 the department~~[-cabinet]~~ may prescribe.

24 (2) For purposes of the sales tax, a return shall be filed by every retailer or seller. For
 25 purposes of the use tax, a return shall be filed by every retailer engaged in business
 26 in the state and by every person purchasing tangible personal property, the storage,
 27 use or other consumption of which is subject to the use tax, who has not paid the

1 use tax due to a retailer required to collect the tax. If a retailer's responsibilities have
 2 been assumed by a certified service provider as defined by KRS 139.795, the
 3 certified service provider shall file the return.

4 (3) Returns shall be signed by the person required to file the return or by a duly
 5 authorized agent but need not be verified by oath.

6 (4) Persons not regularly engaged in selling at retail and not having a permanent place
 7 of business, but who are temporarily engaged in selling from trucks, portable
 8 roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall
 9 report and remit the tax on a nonpermit basis, under rules as the
 10 department~~[cabinet]~~ shall provide for the efficient collection of the sales tax on
 11 sales.

12 (5) The return shall show the amount of the taxes for the period covered by the return
 13 and other information the department~~[cabinet]~~ deems necessary for the proper
 14 administration of this chapter.

15 Section 431. KRS 139.580 is amended to read as follows:

16 The person required to file the return shall deliver the return together with a remittance of
 17 the amount of the tax due to the department~~[cabinet]~~.

18 Section 432. KRS 139.590 is amended to read as follows:

19 (1) For purposes of facilitating the administration, payment, or collection of the taxes
 20 levied by this chapter, the department~~[cabinet]~~ may, within its discretion, permit or
 21 require returns or tax payments for periods other than those prescribed by KRS
 22 139.540 and 139.550.

23 (2) Notwithstanding the provisions of KRS 139.550, any retailer who desires to file his
 24 return on a quarterly basis shall make application in writing to the
 25 department~~[cabinet]~~ at least ninety (90) days prior to the due date of such quarterly
 26 return. When permitted, quarterly returns shall be filed in such manner as the
 27 department~~[cabinet]~~ may prescribe. No retailer may change from a quarterly

1 reporting system to monthly reporting without authorization of the
2 department{cabinet}.

3 (3) In no case shall a retailer be permitted to file quarterly unless monthly payments for
4 the immediately preceding month are made on the basis of taxable gross receipts or
5 total sales price of property used, consumed, or stored, as the case may be.

6 Section 433. KRS 139.600 is amended to read as follows:

7 For the purposes of the sales tax, gross receipts from rentals or leases of tangible personal
8 property shall be reported and the tax paid in accordance with such rules and regulations
9 as the department{cabinet} may prescribe.

10 Section 434. KRS 139.610 is amended to read as follows:

11 (1) The department{cabinet} shall upon written request received on or prior to the due
12 date of the return or tax, for good cause satisfactory to the department{cabinet},
13 extend the time for filing the return or paying the tax for a period not exceeding
14 thirty (30) days.

15 (2) Any person to whom an extension is granted and who pays the tax within the period
16 for which the extension is granted shall pay, in addition to the tax, interest at the tax
17 interest rate as defined in KRS 131.010(6) from the date on which the tax would
18 otherwise have been due.

19 Section 435. KRS 139.620 is amended to read as follows:

20 (1) As soon as practicable after each return is received, the department{cabinet} shall
21 examine and audit it. If the amount of tax computed by the department{cabinet} is
22 greater than the amount returned by the taxpayer, the excess shall be assessed by the
23 department{cabinet} within four (4) years from the date the return was filed, except
24 as provided in subsection (2), and except that in the case of a failure to file a return
25 or of a fraudulent return the excess may be assessed at any time. A notice of such
26 assessment shall be mailed to the taxpayer. The time herein provided may be
27 extended by agreement between the taxpayer and the department{cabinet}.

1 (2) For the purposes of this section, a return filed before the last day prescribed by law
2 for the filing thereof shall be considered as filed on such last day.

3 (3) When a business is discontinued, a determination may be made at any time
4 thereafter within the periods specified in subsection (1) as to liability arising out of
5 that business, irrespective of whether the determination is issued prior to the due
6 date of the liability as otherwise specified in this chapter.

7 Section 436. KRS 139.640 is amended to read as follows:

8 In making a determination of tax liability the department~~[cabinet]~~ may offset
9 overpayments for a period or periods, together with interest on the overpayments, against
10 underpayments for another period or periods, against penalties, and against the interest on
11 the underpayments.

12 Section 437. KRS 139.660 is amended to read as follows:

13 (1) Whenever it is deemed necessary to insure compliance with this chapter, the
14 department~~[cabinet]~~ may require any person subject thereto to place with it such
15 security as the department~~[cabinet]~~ may determine. The amount of the security shall
16 be fixed by the department~~[cabinet]~~ but, except as provided in subsection (2), shall
17 not be greater than twice the estimated average liability of persons filing returns for
18 quarterly periods or three (3) times the estimated average liability of persons
19 required to file returns for monthly periods, determined in such manner as the
20 department~~[cabinet]~~ deems proper.

21 (2) In case of persons habitually delinquent in their obligations under this chapter, the
22 amount of the security shall not be greater than three (3) times the average liability
23 of persons filing returns for quarterly periods or five (5) times the average liability
24 of persons required to file returns for monthly periods.

25 (3) The limitations herein provided apply regardless of the type of security placed with
26 the department~~[cabinet]~~.

27 (4) The amount of the security may be increased or decreased by the

1 department~~[cabinet]~~ subject to the limitations herein provided.

- 2 (5) (a) The department~~[cabinet]~~ may sell the security at public auction if it becomes
 3 necessary to do so in order to recover any tax, interest or penalty due. Security
 4 in the form of a bearer bond issued by the United States or any state or local
 5 governmental unit which has a prevailing market price may, however, be sold
 6 by the department~~[cabinet]~~ at a private sale at a price not lower than the
 7 prevailing market price thereof.
- 8 (b) The department~~[cabinet]~~ shall give notice of the date, time and place of the
 9 sale to the person who placed the security by certified mail addressed to him at
 10 his last known address as it appears in the records of the department~~[cabinet]~~,
 11 or delivery to such person.
- 12 (c) Delivery means handing it to such person or leaving it at his place of business
 13 with the person in charge thereof; or, if there is no one in charge, leaving it in
 14 a conspicuous place therein; or, if the place of business is closed or the person
 15 to be served has no place of business, leaving it at his dwelling house with
 16 some person of suitable age and discretion residing therein. Said notice, if by
 17 certified mail, shall be postmarked no later than ten (10) days prior to said
 18 sale; if by delivery, said notice shall be given no later than ten (10) days prior
 19 to said sale.

- 20 (6) Upon any sale any surplus above the amounts due shall be returned to the person
 21 who placed the security.

22 Section 438. KRS 139.670 is amended to read as follows:

23 If any retailer liable for any amount under this chapter sells out his business or stock of
 24 goods, or otherwise quits business, his successors or assigns shall withhold sufficient of
 25 the purchase price to cover such amount until the former owner produces a receipt from
 26 the department~~[cabinet]~~ showing that it has been paid or a certificate stating that no
 27 amount is due.

1 Section 439. KRS 139.680 is amended to read as follows:

2 (1) If the purchaser of a business or stock of goods fails to withhold the purchase price
3 as required, he becomes personally liable for the payment of the amount required to
4 be withheld by him to the extent of the purchase price, valued in money. Within
5 sixty (60) days after receiving a written request from the purchaser for a certificate,
6 or within sixty (60) days from the date the former owner's records are made
7 available for audit, whichever period expires the later, but in any event not later
8 than ninety (90) days after receiving the request, the department~~{cabinet}~~ shall
9 either issue the certificate or mail notice to the purchaser at his address as it appears
10 on the records of the department~~{cabinet}~~ of the amount that must be paid as a
11 condition to issuing the certificate.

12 (2) Failure of the department~~{cabinet}~~ to mail the notice will release the purchaser from
13 any further obligation to withhold the purchase price as above provided.

14 (3) The time within which the obligation of a successor may be enforced shall start to
15 run at the time the retailer sells out his business or stock of goods or at the time that
16 the determination against the retailer becomes final, whichever event occurs the
17 later.

18 Section 440. KRS 139.700 is amended to read as follows:

19 The department~~{cabinet}~~ may, in its discretion, upon application authorize the collection
20 of the tax imposed herein by any retailer not engaged in business within this state who, to
21 the satisfaction of the department~~{cabinet}~~ furnishes adequate security to insure
22 collection and payment of the tax. Such retailer shall be issued a permit to collect such
23 tax in such manner, and subject to such regulation and agreements as the
24 department~~{cabinet}~~ shall prescribe. When so authorized, it shall be the duty of such
25 retailer to collect the tax upon all tangible personal property sold to his knowledge for use
26 within this state, in the same manner and subject to the same requirements as a retailer
27 engaged in business within this state.

1 Section 441. KRS 139.710 is amended to read as follows:

2 The department~~[cabinet]~~ shall administer the provisions of this chapter and shall have all
3 of the powers, rights, duties, and authority with respect to the assessment, collection,
4 refunding, and administration of the taxes levied by this chapter, conferred generally upon
5 the department~~[cabinet]~~ by the Kentucky Revised Statutes including Chapters 131, 134,
6 and 135.

7 Section 442. KRS 139.720 is amended to read as follows:

8 (1) Every seller, every retailer, and every person storing, using and otherwise
9 consuming in this state tangible personal property purchased from a retailer shall
10 keep such records, receipts, invoices, and other pertinent papers in such form as the
11 department~~[cabinet]~~ may require.

12 (2) Every such seller, retailer, or person who files the returns required under this
13 chapter shall keep such records for not less than four (4) years from the making of
14 such records unless the department~~[cabinet]~~ in writing sooner authorizes their
15 destruction.

16 Section 443. KRS 139.730 is amended to read as follows:

17 In the administration of the sales and use tax, the department~~[cabinet]~~ may require the
18 filing of reports by any person or class of persons having in his or their possession or
19 custody information relating to sales of tangible personal property, the storage, use, or
20 other consumption of which is subject to the tax. The report shall be filed at the time
21 specified by the department~~[cabinet]~~ and shall contain such information as the
22 department~~[cabinet]~~ may require.

23 Section 444. KRS 139.735 is amended to read as follows:

24 (1) The Department of Revenue~~[-Cabinet]~~ shall not promulgate any administrative
25 regulation or policy either written or unwritten whose provisions are more stringent
26 than the provisions of KRS 139.270 and 103 KAR 31.030 regarding the good faith
27 provisions for resale certificates, exemption certificates and direct pay

1 authorizations.

2 (2) It shall be mandatory upon the Department of Revenue~~[Cabinet]~~ during any audit
3 process to honor resale certificates, exemption certificates and direct pay
4 authorizations when executed according to the good faith provisions defined and
5 described in KRS 139.270 and 103 KAR 31.030.

6 Section 445. KRS 139.740 is amended to read as follows:

7 (1) No judgment shall be entered and no garnishment or attachment shall be permitted
8 by any court in this Commonwealth in an action for the collection of a debt arising
9 out of the sale of tangible personal property unless an affidavit containing a
10 certificate of service is executed by the plaintiff to the effect that all use taxes due
11 the Commonwealth have been paid.

12 (2) Prior to the filing of the affidavit, required under subsection (1) of this section, the
13 plaintiff (including counterclaimants or crossclaimants) shall, by first-class mail,
14 serve upon the department~~[cabinet]~~ a copy of the affidavit. Within fifteen (15) days
15 from the date of the filing of the affidavit the department~~[cabinet]~~ may file a
16 counteraffidavit. In such event no judgment shall be entered or garnishment or
17 attachment issued until proof has been taken concerning the matters at issue in the
18 affidavit and counteraffidavit.

19 (3) In the event the use tax levied by this chapter is found to be due and unpaid the
20 plaintiff may elect to pay the tax to the department~~[cabinet]~~, and the amount of the
21 tax paid by the plaintiff shall be recovered as a part of any judgment entered. If the
22 plaintiff does not elect to pay the use tax found to be due and unpaid, judgment for
23 the amount of the tax shall be awarded to the Commonwealth.

24 (4) Any judgment awarded to the Commonwealth under this section shall constitute a
25 prior claim to any judgment obtained by the plaintiff.

26 (5) Tax as defined herein includes interest accrued thereon at the tax interest rate as
27 defined in KRS 131.010(6).

1 (6) The provisions of this section shall not apply to a plaintiff holding a retail permit
2 issued pursuant to this chapter.

3 Section 446. KRS 139.760 is amended to read as follows:

4 (1) Whenever any person fails to comply with any provisions of this chapter or any rule
5 or regulation of the department~~[cabinet]~~ relating to the provisions of this chapter,
6 the department~~[cabinet]~~ may revoke or suspend any one (1) or more of the permits
7 held by the person.

8 (2) The department~~[cabinet]~~ shall not issue a new permit after the revocation of a
9 permit unless it is satisfied that the former holder of the permit will comply with the
10 provisions of this chapter and the regulations relating thereto.

11 (3) No suit shall be maintained in any court to restrain or delay the collection or
12 payment of any tax levied by this chapter.

13 Section 447. KRS 139.770 is amended to read as follows:

14 (1) The taxes paid pursuant to the provisions of this chapter shall be refunded or
15 credited in the manner provided in KRS 134.580.

16 (2) A claim for refund or credit shall be made on a form prescribed by the
17 department~~[cabinet]~~ and shall contain such information as the department~~[cabinet]~~
18 may require.

19 (3) No taxpayer or certified service provider as provided by KRS 139.795 shall be
20 entitled to a refund or credit of the taxes paid pursuant to the provisions of this
21 chapter where the taxes have been collected from a purchaser as provided by KRS
22 139.210 and 139.340, unless the amount of taxes collected from the purchaser are
23 refunded to the purchaser by the taxpayer or certified service provider as provided
24 by KRS 139.795 who paid the taxes to the State Treasury.

25 (4) Where applicable, the amount of any claim for refund or credit shall be reduced by
26 the amount deducted by the taxpayer or certified service provider as provided by
27 KRS 139.795 pursuant to KRS 139.570 at the time the taxes were paid to the State

1 Treasury.

2 Section 448. KRS 139.785 is amended to read as follows:

- 3 (1) The department~~[cabinet]~~ is authorized and directed to enter into the agreement with
 4 one (1) or more states to simplify and modernize sales and use tax administration in
 5 order to substantially reduce the burden of tax compliance for all sellers and for all
 6 types of commerce. To further the agreement, the department~~[cabinet]~~ is authorized
 7 to act jointly with other states that are members of the agreement to establish
 8 standards for certification of a certified service provider and certified automated
 9 system and establish performance standards for multistate sellers.
- 10 (2) The department~~[cabinet]~~ is further authorized to take other actions reasonably
 11 required to implement the provisions set forth in KRS 139.780 to 139.795. Other
 12 actions authorized by this section include, but are not limited to, the adoption of
 13 rules and regulations and the joint procurement, with other member states, of goods
 14 and services to further the cooperative agreement. Notwithstanding the provisions
 15 of KRS Chapter 13A, the department~~[cabinet]~~ may issue educational bulletins to
 16 the extent necessary to enhance the understanding of and compliance with terms of
 17 the agreement.
- 18 (3) The commissioner of the Department of Revenue~~[secretary of the cabinet]~~ or the
 19 commissioner's~~[secretary's]~~ designee, the state budget director or the director's
 20 designee, and two (2) legislators are authorized to represent this state before the
 21 other states that are signatories to the agreement. One (1) member of the Senate
 22 shall be appointed by the President of the Senate, and one (1) member of the House
 23 of Representatives shall be appointed by the Speaker of the House of
 24 Representatives.

25 Section 449. KRS 139.789 is amended to read as follows:

26 The department~~[cabinet]~~ shall not enter into the agreement unless the agreement requires
 27 each state to abide by the following requirements:

- 1 (1) The agreement shall set restrictions to achieve more uniform state rates through the
2 following:
- 3 (a) Limiting the number of state rates;
- 4 (b) Limiting the application of maximums on the amount of state tax that is due
5 on a transaction; and
- 6 (c) Limiting the application of thresholds on the application of state tax.
- 7 (2) The agreement shall establish uniform standards for the following:
- 8 (a) The sourcing of transactions to taxing jurisdictions;
- 9 (b) The administration of exempt sales;
- 10 (c) The allowances a seller can take for bad debts; and
- 11 (d) Sales and use tax returns and remittances.
- 12 (3) The agreement shall require states to develop and adopt uniform definitions of sales
13 and use tax terms. The definitions shall enable a state to preserve its ability to make
14 policy choices not inconsistent with the uniform definitions.
- 15 (4) The agreement shall provide a central, electronic registration system that allows a
16 seller to register to collect and remit sales and use taxes for all signatory states.
- 17 (5) The agreement shall provide that registration with the central registration system
18 and the collection of sales and use taxes in the signatory state will not be used as a
19 factor in determining whether the seller has nexus with a state for any tax.
- 20 (6) The agreement shall provide for a reduction of the burdens of complying with local
21 sales and use taxes through the following:
- 22 (a) Restricting variances between the state and local tax bases;
- 23 (b) Requiring states to administer any sales and use taxes levied by local
24 jurisdictions within the state so that sellers collecting and remitting these taxes
25 will not have to register or file returns with, remit funds to, or be subject to
26 independent audits from local taxing jurisdictions;
- 27 (c) Restricting the frequency of changes in the local sales and use tax rates and

1 setting effective dates for the application of local jurisdictional boundary
2 changes to local sales and use taxes; and

3 (d) Providing notice of changes in local sales and use tax rates and of changes in
4 the boundaries of local taxing jurisdictions.

5 (7) The agreement shall outline any monetary allowances that are to be provided by the
6 states to sellers or certified service providers.

7 (8) The agreement shall require each state to certify compliance with the terms of the
8 agreement prior to joining and to maintain compliance under the laws of the
9 member state, with all provisions of the agreement while a member.

10 (9) The agreement shall require each state to adopt a uniform policy for certified
11 service providers that protects the privacy of consumers and maintains the
12 confidentiality of tax information.

13 (10) The agreement shall provide for the appointment of an advisory council of private
14 sector representatives and an advisory council of non-member state representatives
15 to consult with in the administration of the agreement.

16 Section 450. KRS 139.980 is amended to read as follows:

17 (1) Any person who violates any provision of this chapter shall be subject to the
18 uniform civil penalties imposed pursuant to KRS 131.180 and interest upon the
19 unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date
20 prescribed for its payment until payment is actually made to the
21 department~~[cabinet]~~.

22 Section 451. KRS 139.990 is amended to read as follows:

23 (1) Any person who executes:

24 (a) A resale certificate for property in accordance with KRS 139.270 knowing at
25 the time of purchase that such property is not to be resold by him in the
26 regular course of business, for the purpose of evading the tax imposed under
27 this chapter;

1 (b) An exemption certificate for property in accordance with KRS 139.270,
 2 knowing at the time of the purchase that he is not engaged in an occupation
 3 that would entitle him to exemption status or any person who does not intend
 4 to use the property in the prescribed manner;

5 (c) A direct pay authorization for property not in accordance with 103 KAR
 6 31.030; or

7 (d) An MPU exemption form or Direct Mail Form issued not in accordance with
 8 the provisions KRS 139.776 or 139.777;

9 shall be guilty of a Class B misdemeanor.

10 (2) A person who engages in business as a seller in this state without a permit or
 11 permits as required by this chapter or after a permit has been suspended, and each
 12 officer of any corporation which is so engaged in business, shall be guilty of a Class
 13 B misdemeanor.

14 (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or
 15 139.700 shall be guilty of a Class B misdemeanor.

16 (4) Any person who violates any of the regulations promulgated by the
 17 department~~cabinet~~ shall be guilty of a Class B misdemeanor.

18 (5) Any person, business, or motion picture production company falsifying expenditure
 19 reports, applications, or any other statements made in securing the tax credit
 20 afforded by KRS 139.5382 to 139.5386 shall be guilty of a Class D felony. Such
 21 motion picture production companies shall be denied any tax credit to which they
 22 would otherwise be entitled, and shall be prohibited from applying for any future
 23 credit afforded by KRS 139.5382 to 139.5386.

24 Section 452. KRS 140.040 is amended to read as follows:

25 (1) Whenever any person shall exercise a power of appointment derived from any
 26 disposition of property (whether by will, deed, trust agreement, contract, insurance
 27 policy or other instrument) regardless of when made, such appointment shall be

1 deemed a transfer taxable under the provisions of this chapter in the same manner as
2 though the property to which such appointment relates belonged absolutely to the
3 donee of such power and had been bequeathed or devised by such donee by will;
4 and whenever any person possessing such a power of appointment so derived shall
5 omit or fail to exercise the same in whole or in part, within the time provided
6 therefor, a transfer taxable under the provisions of this chapter shall be deemed to
7 take place to the person or persons receiving such property as a result of such
8 omission or failure to the same extent that such property would have been subject to
9 taxation if it had passed under the will of the donee of such power. The time at
10 which such transfer shall be deemed to take place, for the purpose of taxation, shall
11 be governed by the provisions of subsections (2) to (4) of this section.

- 12 (2) In the case of a power of appointment which passes to the donee thereof at the death
13 of the donor, under any instrument, and if the donor dies on or after April 24, 1936,
14 the transfer shall be deemed to take place, for the purpose of taxation, at the time of
15 the death of the donor and the assessment be made at that time against the life
16 interest of the donee and the remainder against the corpus. The value of the property
17 to which the power of appointment relates shall be determined as of the date of the
18 death of the donor and shall be taxed at the rates and be subject to the exemptions in
19 effect at the death of the donor. The determination of the applicable rates and
20 exemptions (in effect at the death of the donor) shall be governed by the
21 relationship of the beneficiary to the donee of the power of appointment. In the
22 event the payment of the tax at the death of the donor should operate to provide an
23 exemption for any beneficiary of a donee not authorized by KRS 140.080, then such
24 exemption shall be retrospectively disallowed at the time of the death of the donee.
25 It is further provided that the remainder interest passing under the donee's power of
26 appointment, whether exercised or not, shall be added to and made a part of the
27 distributable share of the donee's estate for the purpose of determining the

1 exemption and rates applicable thereto.

2 (3) In all cases other than that described in subsection (2) the transfer shall be deemed
3 to take place, for the purpose of taxation, at the time of the death of the donee. In
4 such cases, the value of the property to which the power of appointment relates shall
5 be determined as of the date of the death of the donee and shall be taxed at the rates
6 and be subject to the exemptions in effect at the death of the donee. The
7 determination of the applicable rates and exemptions (in effect at the death of the
8 donee) shall be governed by the relationship of the beneficiary to the donee of the
9 power of appointment.

10 (4) The provisions of subsection (2) shall not preclude the taxation, at the death of the
11 donee, of any transfer made by means of a power of appointment if such transfer
12 was not in fact reported to or a tax assessed thereon by the Department of Revenue~~Cabinet~~
13 ~~Cabinet~~ within the period of limitation prescribed by KRS 140.160. If the transfer
14 by the power of appointment is not so reported or a tax assessed thereon, the period
15 of limitation prescribed in KRS 140.160 shall not begin to run until the death of the
16 donee of such power.

17 (5) The amendments to this section, adopted by the 1948 General Assembly, shall apply
18 to all powers of appointment whether created before or after the effective date of
19 said amendments. It is the declared intention of the General Assembly to impose a
20 tax upon every transfer of property by means of a power of appointment, regardless
21 of when or how created, and it is the declared intention of the General Assembly
22 that the use of the power of appointment device shall not permit the transfer of
23 property, to which such a power relates, to escape thereby the payment of state
24 inheritance taxes.

25 Section 453. KRS 140.080 is amended to read as follows:

26 (1) The following exemptions chargeable against the lowest bracket or brackets of
27 inheritable interests shall be free from any tax under the preceding provisions of this

chapter:

(a) Surviving spouse, total inheritable interest. Effective as to decedents dying after August 1, 1985, notwithstanding anything in this chapter to the contrary, if the decedent's personal representative (or trustee or transferee, absent a personal representative) shall so elect, the spouse's inheritable interest shall include the entire value of any trust or life estate which is in a form that qualifies for the federal estate tax marital deductions under section 2056(b)(5) or 2056(b)(7) of the Internal Revenue Code of 1954, as amended through December 31, 1984, regardless of whether or not the federal estate tax marital deduction is elected by the decedent's personal representative. To be valid, the election referred to in the sentence immediately preceding must be made in the form prescribed by the Department of Revenue~~[-Cabinet]~~ and must be filed on or before the due date of the tax return (plus extensions) or with the first tax return filed, whichever last occurs;

(b) Class A beneficiaries as defined in KRS 140.070, other than the surviving spouse, of estates of decedents dying prior to July 1, 1995, as follows:

1. Infant child by blood or adoption, \$20,000;
2. Child by blood who has been declared mentally disabled by a court of competent jurisdiction, \$20,000;
3. Child adopted during infancy who has been declared mentally disabled by a court of competent jurisdiction, \$20,000; or a
4. Child adopted during adulthood who was reared by the decedent during infancy and who has been declared mentally disabled by a court of competent jurisdiction, \$20,000;
5. Parent, \$5,000;
6. Child by blood, \$5,000;
7. Stepchild, \$5,000;

- 1 8. Child adopted during infancy, \$5,000;
- 2 9. Child adopted during adulthood who was reared by the decedent during
- 3 infancy, \$5,000; or a
- 4 10. Grandchild who is the issue of a child by blood, the issue of a stepchild,
- 5 the issue of a child adopted during infancy or the issue of a child
- 6 adopted during adulthood who was reared by the decedent during
- 7 infancy, \$5,000;
- 8 (c) Class A beneficiaries as defined in KRS 140.070, other than the surviving
- 9 spouse, of estates of decedents dying on or after July 1, 1995, shall be as
- 10 follows:
- 11 1. For decedents dying between July 1, 1995, and June 30, 1996, the
- 12 greater of the exemption established pursuant to paragraph (1)(b) of this
- 13 section or one-fourth (1/4) of each beneficiary's inheritable interest;
- 14 2. For decedents dying between July 1, 1996, and June 30, 1997, the
- 15 greater of the exemption established pursuant to paragraph (1)(b) of this
- 16 section or one-half (1/2) of each beneficiary's inheritable interest;
- 17 3. For decedents dying between July 1, 1997, and June 30, 1998, the
- 18 greater of the exemption established pursuant to paragraph (1)(b) of this
- 19 section or three-fourths (3/4) of each beneficiary's inheritable interest;
- 20 and
- 21 4. For each decedent dying after June 30, 1998, each beneficiary's total
- 22 inheritable interest;
- 23 (d) All persons of Class B, under KRS 140.070, \$1,000; and
- 24 (e) All persons of Class C, under KRS 140.070, \$500.
- 25 (2) If the decedent was not a resident of this state, the exemption shall be the same
- 26 proportion of the allowable exemption in the case of residents that the property
- 27 taxable by this state bears to the whole property transferred by the decedent.

1 Section 454. KRS 140.090 is amended to read as follows:

2 (1) In calculating the value of the distributive shares the following deductions and no
3 others shall be allowed:

4 (a) Debts of the decedent, except debts secured by property not subject to the tax
5 jurisdiction of Kentucky; and except debts barred by the statute of limitations;

6 (b) Taxes accrued and unpaid, except those on property not subject to the tax
7 jurisdiction of Kentucky;

8 (c) Death duties paid to foreign countries;

9 (d) Federal estate taxes, in the proportion which the net estate in Kentucky subject
10 to federal estate taxes bears to the total net estate everywhere subject to
11 federal estate taxes; all calculations are subject to approval by the Department
12 of Revenue~~[Cabinet]~~;

13 (e) Drainage, street, or other special assessments due and unpaid which are a lien
14 on said property;

15 (f) Funeral, monument, and cemetery lot maintenance expenses actually paid not
16 exceeding in total five thousand dollars (\$5,000);

17 (g) Commission of executors and administrators in the amount actually allowed
18 and paid;

19 (h) Cost of administration, including attorney's fees actually allowed and paid.

20 (2) Notwithstanding the provisions of KRS 404.040, the debts of a deceased wife,
21 subject to the exception in subsection (1)(a), shall be allowed in calculating the
22 distributive shares of her estate for purposes of this chapter, provided such debts are
23 paid from the proceeds of her estate.

24 Section 455. KRS 140.100 is amended to read as follows:

25 (1) The Department of Insurance, on the application of the Department of Revenue~~[~~
26 ~~Cabinet]~~, shall determine, and certify in duplicate to the department~~[cabinet]~~, the
27 value of any future or contingent estate, income or interest therein, limited,

contingent, dependent or determinable upon the lives of persons in being, upon the facts contained in the application or other facts submitted by the department~~cabinet~~. No fee shall be charged by the division for this service. The certificate shall be competent evidence that the method of computation therein is correct.

(2) The value of every future, contingent or limited estate, income or interest for the purpose of this chapter shall be determined by the rules, methods and standards of mortality and of value prescribed by the appropriate United States life mortality tables for ascertaining the value of life estates, annuities and remainder interests except that the rate of interest assessed in computing the present value of all future interests and contingencies shall be four percent (4%) per annum.

(3) When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of the interest for the purpose of taxation shall be that amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which the annuitant or life tenant was entitled to the annuity or was in possession of the life estate. The tax on such annuities and life interests shall be payable out of the corpus of the estate, unless otherwise provided under the terms of the will.

(4) Notwithstanding anything in this chapter to the contrary, the value of a surviving spouse's interest in a trust or life estate which was exempt from Kentucky inheritance tax in the first spouse's estate pursuant to an election made under KRS 140.080(1)(a) shall be deemed to be equal to the entire value of the property held in the trust or life estate, at the surviving spouse's death, for Kentucky inheritance tax purposes in the surviving spouse's estate.

Section 456. KRS 140.110 is amended to read as follows:

(1) In the case of estates in expectancy which are contingent or defeasible, a tax shall be levied at the rate which, on the happening of the most probable contingencies or

conditions named in the will, deed, trust agreement, contract, insurance policy, or other instrument, would be applicable under the provisions of this chapter. Moneys so collected shall be distributed as are other inheritance tax funds. If the property so taxed shall ultimately vest in possession in persons taxable at a lower rate, or in a person or a corporation exempt from taxation by this chapter, upon application by such beneficiary to the Department of Revenue~~Cabinet~~ for refund of any excess tax, the Department of Revenue~~Cabinet~~, after investigation, shall certify to the Finance and Administration Cabinet the amount of such refund. The Finance and Administration Cabinet shall refund such excess payment of tax in the same manner as other refunds are made.

- (2) Where an estate or interest can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of divesting.

Section 457. KRS 140.160 is amended to read as follows:

- (1) The Department of Revenue~~Cabinet~~ shall have full supervision of the collection of all taxes due under the provisions of this chapter, including the power to institute suit in this and other states. It may employ attorneys and other persons necessary to carry out the full intent and purpose of this chapter. The department~~cabinet~~ shall furnish, upon application, blank forms covering information as may be necessary to determine the amount of tax due the state on the transfer of all property subject to tax.

- (2) The department~~cabinet~~ may cause personal representatives or beneficiaries to file all statements required by this chapter with the clerks of the proper courts and with the department~~cabinet~~, and may require them to furnish any additional information deemed necessary to support the computation of the amount of tax that should be paid by the estate. The personal representative, or the beneficiaries in the absence of a personal representative, shall compute the taxes imposed by this chapter on the tax return provided by the department~~cabinet~~ when:

- (a) 1. A United States estate tax return is required to be filed under federal law and applicable regulations; and
- 2.
2. The estate includes property over which Kentucky has jurisdiction for purposes of the taxes imposed by this chapter; or
- (b) Any assets from the estate subject to the taxes imposed by this chapter pass to a beneficiary taxable under KRS 140.070.

7 The tax return, when required, shall be filed with the department~~[cabinet]~~ within
8 eighteen (18) months after the death of the decedent or at the time payment of the
9 tax is made pursuant to KRS 140.210.

- (3) Except as herein provided, no action to enforce the collection of the tax imposed by this chapter shall be commenced more than ten (10) years after the cause of action first accrued. In case the settlement of an estate is delayed because of litigation or other unavoidable cause, the delay shall suspend the limitation, prescribed by this subsection, until the cause of delay is removed. In the case of a fraudulent return or any other fraudulent representation affecting the amount of or the liability for the tax imposed by this chapter notwithstanding any provision of limitation provided elsewhere, the tax due by reason thereof may at any time be assessed and collected by the methods set out in this chapter, including action in a court of competent jurisdiction.

20 Section 458. KRS 140.165 is amended to read as follows:

21 The department~~[cabinet]~~ may make such audits, appraisals, and examinations of records
22 according to KRS 131.130 to properly supervise the collection of all taxes due under the
23 provisions of this chapter. A completed tax return with full payment attached shall be
24 final one (1) year after receipt by the department~~[cabinet]~~ unless an audit has been
25 initiated with due notice to the personal representative, except:

- (1) If any assets of the estate were not reported on the tax return filed with the
department~~cabinet~~, or

- 1 (2) If any information was not revealed to the department~~[cabinet]~~ which would affect
2 the amount of tax due.

3 Section 459. KRS 140.170 is amended to read as follows:

- 4 (1) The District Court, upon the request of the personal representative or any interested
5 party, shall appoint some competent person as appraiser of the estate. The appraiser
6 shall give notice to all persons having an interest in the estate and to such other
7 persons as the court may by order direct, and shall then appraise the property
8 belonging to the estate. His report shall be filed with the court and a copy thereof
9 with the Department of Revenue~~[Cabinet]~~. He shall be paid for his services out of
10 the funds of the estate, on the certification of the court, the amount to be fixed by
11 that court. The total compensation of the appraiser shall not exceed one-tenth of one
12 percent (0.1%) of the total appraised value of the estate for inheritance tax purposes,
13 but there shall be a minimum allowance of five dollars (\$5), together with the
14 appraiser's actual and necessary traveling expenses.

- 15 (2) After investigation, the department~~[cabinet]~~ may change the value of the estate for
16 inheritance taxes and advise the representatives of the estate of this changed
17 valuation after the receipt of a completed tax return and full payment as shown by
18 the tax return.

- 19 (3) No appraiser shall accept any fee or reward from a personal representative, trustee,
20 legatee, next of kin or heir of the decedent, or from any other person liable to pay
21 the tax or any portion thereof.

- 22 (4) No person shall willfully and knowingly subscribe to or make any false statement of
23 fact, or knowingly subscribe to or exhibit any false paper or false report with intent
24 to deceive any appraiser.

- 25 (5) The department~~[cabinet]~~ shall keep a record of all returns, reports, and schedules
26 attached thereto required by this chapter for twelve (12) years.

27 Section 460. KRS 140.180 is amended to read as follows:

1 If real property of a decedent is passed to another person so as to become subject to the
 2 tax, his personal representative or trustee shall inform the department~~[cabinet]~~ thereof
 3 within six (6) months after his appointment, or if the fact is not known to him within that
 4 time, then within one (1) month after the fact becomes known to him.

5 Section 461. KRS 140.210 is amended to read as follows:

6 (1) All taxes imposed by this chapter, unless otherwise provided in this chapter, shall
 7 be due at the death of the decedent and shall be payable to the Department of
 8 Revenue~~[Cabinet]~~ within eighteen (18) months thereafter. If they are paid within
 9 nine (9) months, a discount of five percent (5%) shall be allowed, and if they are
 10 paid within eighteen (18) months, no interest shall be charged and collected thereon.
 11 If the taxes due are not paid within eighteen (18) months, interest at the tax interest
 12 rate as defined in KRS 131.010(6) shall be paid from the expiration of the eighteen
 13 (18) months until payment is actually made to the department~~[cabinet]~~.

14 (2) In all cases where the personal representatives or trustees do not pay the taxes
 15 within eighteen (18) months from the death of the decedent, they shall be required
 16 to give bond, in the form and to the effect prescribed by the department~~[cabinet]~~,
 17 for the payment of the taxes and interest.

18 Section 462. KRS 140.222 is amended to read as follows:

19 (1) When the net tax due from a beneficiary's distributive share exceeds five thousand
 20 dollars (\$5,000), the beneficiary may elect to pay the inheritance tax in ten (10)
 21 equal installments. The first installment shall be due at the time the return is filed
 22 with succeeding payments due in annual installments beginning one (1) year after
 23 the return is filed.

24 (2) The portion of the tax deferred under this section shall be charged with interest at
 25 the tax interest rate as defined in KRS 131.010(6) commencing eighteen (18)
 26 months after the date of death.

27 (3) When the beneficiary elects to pay the tax on his share as provided in this section,

such election must be made in writing and signed by the beneficiary and must be filed with the Department of Revenue~~[Cabinet]~~ at the time of filing the tax return for the decedent's estate under KRS 140.160(2). The filing of the election together with payment of the first installment shall relieve the personal representative or trustee of the estate from further liability for the tax payments deferred under this section and the bond requirements of KRS 140.210, subject to the final approval by the Department of Revenue~~[Cabinet]~~ of all other taxes due under this chapter.

(4) A beneficiary electing to defer the payment of taxes under this section shall be personally liable for the amount of deferred taxes until paid.

(5) The period of limitations for actions to enforce the collection of taxes imposed by this chapter as provided by KRS 140.160(3) shall be suspended for the period of time for deferred payment granted by this section.

Section 463. KRS 140.224 is amended to read as follows:

(1) Where a beneficiary elects to pay the inheritance tax on the installment basis as provided in this chapter, such beneficiary may be required to post sufficient security at any time the department~~[cabinet]~~ reasonably believes collection of the tax may be in jeopardy.

(2) Failure of a beneficiary to pay any installment due or to post the required security shall cause all installments to become immediately due and payable.

Section 464. KRS 140.270 is amended to read as follows:

(1) In the absence of administration in this state upon the estate of a nonresident, the Department of Revenue~~[Cabinet]~~, at the request of a personal representative duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished by the personal representative or grantee, or otherwise, may determine whether or not any property of the decedent within this state is subject to the provisions of this chapter. If so, the department~~[cabinet]~~ may determine the amount

1 of tax and adjust the same with the personal representative or grantee, and for that
 2 purpose may appoint an appraiser to appraise the property. The expense of appraisal
 3 shall be charged upon the property in addition to the tax. The
 4 department's~~[cabinet's]~~ certificate of the amount of tax and its receipt for the
 5 amount therein certified may be filed with the county judge/executive of the county
 6 where the property is located, and when so filed shall be evidence of the payment of
 7 the tax to the extent of such certification. When the tax is not adjusted within six (6)
 8 months after the death of the decedent, the proper District Court, upon application
 9 of the department~~[cabinet]~~, shall appoint an administrator in this state.

- 10 (2) When evidence of ownership of intangible personal property belonging to a
 11 nonresident decedent is found to be physically located in this state, the Department
 12 of Revenue~~[Cabinet]~~ shall so inform the state official collecting death tax in the
 13 state of domicile of the decedent, if that state furnishes like information to the
 14 Department of Revenue~~[Cabinet]~~ of this state in a reciprocal manner.

15 Section 465. KRS 140.275 is amended to read as follows:

- 16 (1) It is hereby declared to be the legislative policy that Kentucky shall not be a party to
 17 interstate double taxation under the terms of the Kentucky inheritance and estate tax
 18 laws. Pursuant to this policy, the commissioner of the Department of
 19 Revenue~~[secretary of revenue]~~ is hereby authorized to omit from the property
 20 subject to tax under those laws, any intangible personal property of a nonresident
 21 decedent (having a domicile in the United States) held in trust by a Kentucky trustee
 22 if the jurisdiction (state, territory or District of Columbia) in which the decedent
 23 was domiciled grants similar immunity to residents of Kentucky, but only in the
 24 event the personal representative shall present evidence that the tax has been or will
 25 be paid to the other jurisdiction. If another state, territory, or the District of
 26 Columbia of the United States constitutionally imposes a tax on the transfer of
 27 estates or of the distributive shares thereof, but grants immunity from the tax in

1 respect of any intangible property of its resident decedents held in trust by a
 2 Kentucky trustee, then the commissioner of the Department of Revenue~~[secretary~~
 3 ~~of revenue]~~ is hereby authorized to exclude from the property subject to tax under
 4 the Kentucky inheritance and estate tax laws, the intangible personal property of a
 5 Kentucky resident held in trust in that jurisdiction but only in the event the personal
 6 representative shall present evidence that the tax has been or will be paid to the
 7 other jurisdiction.

8 (2) It is expressly provided, however, in view of the uncertainty now prevailing with
 9 respect to the correct interpretation of the Constitution of the United States
 10 regarding the jurisdiction of the several states, that the provisions of this section
 11 shall be inoperative under the second alternative until and unless an agreement,
 12 approved as to legality by the Attorney General, between the commissioner of the
 13 Department of Revenue~~[secretary of revenue]~~ as agent for Kentucky and the
 14 appropriate administrative official of such other state, shall have been executed and
 15 an original copy thereof filed with the Kentucky Department of Revenue~~[Cabinet]~~.

16 (3) This section is intended to apply retroactively to all estates of decedents on or after
 17 April 25, 1936, which are subject to Kentucky inheritance tax laws.

18 Section 466. KRS 140.285 is amended to read as follows:

19 (1) When the Department of Revenue~~[Cabinet]~~ claims that a decedent was domiciled
 20 in Kentucky at the time of death and the taxing authorities of another state or states
 21 make a similar claim with respect to their state or states, the commissioner of the
 22 Department of Revenue~~[secretary of revenue]~~ may enter into a written agreement
 23 with such taxing authorities and the executor, administrator or trustee, fixing the
 24 sum acceptable to the department~~[cabinet]~~ in full settlement of the inheritance or
 25 estate taxes imposable under this chapter. Such agreement shall also fix the sum
 26 acceptable to such other state or states in full settlement of the death taxes
 27 imposable by such state or states.

1 (2) If the aggregate amount payable under such agreement to the states involved is less
 2 than the maximum sum allowable as a credit to the estate against the federal estate
 3 tax imposed thereon, then the executor, administrator or trustee shall also pay to the
 4 State of Kentucky as an estate tax so much of the difference between such aggregate
 5 amount and the amount of such credit as the amount payable to Kentucky under the
 6 agreement bears to such aggregate amount.

7 Section 467. KRS 140.290 is amended to read as follows:

8 Whenever debts are proved against the estate of a decedent after the payment of legacies
 9 or distribution of property from which the tax has been deducted or upon which it has
 10 been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion
 11 of the tax so deducted or paid shall be repaid to him, by the personal representative or
 12 trustee if the tax has not been paid to the Department of Revenue~~[Cabinet]~~, or by the
 13 department~~[cabinet]~~ if it has been so paid.

14 Section 468. KRS 140.320 is amended to read as follows:

15 If, within five (5) years after the death of the decedent, a qualified person sells, conveys,
 16 or otherwise transfers the ownership, directly or indirectly, of the qualified real estate to
 17 any person or persons other than another qualified person who is a joint owner or the
 18 qualified real estate is converted to a use other than agricultural or horticultural use, then
 19 the qualified persons to whom the property passed at the death of the decedent in whose
 20 estate the agricultural or horticultural value was reported shall cause to be paid, pursuant
 21 to administrative regulations promulgated by the Department of Revenue~~[Cabinet]~~, the
 22 additional inheritance tax that would have been due on the decedent's estate if fair market
 23 value had been used to compute the tax due on the estate rather than the agricultural or
 24 horticultural value, along with interest at the tax interest rate as defined in KRS
 25 131.010(6).

26 Section 469. KRS 140.330 is amended to read as follows:

27 In the event the qualified real estate is reported for inheritance tax purposes at its

1 agricultural or horticultural value and that real estate has been assessed at its agricultural
 2 or horticultural value for ad valorem tax purposes, then that assessment shall be presumed
 3 to be its agricultural or horticultural value for inheritance tax purposes. If, however, the
 4 real estate has not been so assessed for ad valorem tax purposes, then the agricultural or
 5 horticultural value shall be determined pursuant to KRS Chapter 132 and such regulations
 6 as may be promulgated by the Department of Revenue~~[-Cabinet]~~ to determine
 7 horticultural or agricultural value for inheritance tax purposes.

8 Section 470. KRS 140.350 is amended to read as follows:

9 At such time as the Department of Revenue~~[-Cabinet]~~ accepts the agricultural or
 10 horticultural value on qualified real estate comprising a portion of a decedent's estate and
 11 issues tax waivers thereon, it shall cause to be filed in the office of the county clerk of the
 12 county where the real estate or the greater portion thereof is located, on a form prescribed
 13 by the Department of Revenue~~[-Cabinet]~~, a lien which on its face shall expire in five (5)
 14 years and the lien shall secure the payment of any additional tax which may become due
 15 as the result of the qualified real estate being sold to others than qualified persons or the
 16 qualified real estate being converted to other than a qualified use.

17 If additional taxes are due as the result of the real estate being transferred to other
 18 than a qualified person or its use is converted to other than agricultural or horticultural
 19 use, and the additional tax is not paid after assessment of the tax, within the time
 20 prescribed by the regulations of the Department of Revenue~~[-Cabinet]~~, then the
 21 Department of Revenue~~[-Cabinet]~~ may proceed to enforce the lien in accordance with
 22 law.

23 Section 471. KRS 141.010 is amended to read as follows:

24 As used in this chapter, unless the context requires otherwise:

- 25 (1) "Commissioner"~~["Secretary"]~~ means the commissioner of the Department of
 26 Revenue~~[secretary of revenue]~~;
- 27 (2) "Department"~~["Cabinet"]~~ means the Department of Revenue~~[-Cabinet]~~;

- 1 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
2 31, 2001, exclusive of any amendments made subsequent to that date, other than
3 amendments that extend provisions in effect on December 31, 2001, that would
4 otherwise terminate, and as modified by KRS 141.0101;
- 5 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
6 Code;
- 7 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
8 Revenue Code;
- 9 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
10 Revenue Code;
- 11 (7) "Individual" means a natural person;
- 12 (8) For taxable years beginning on or after January 1, 1974, "federal income tax" means
13 the amount of federal income tax actually paid or accrued for the taxable year on
14 taxable income as defined in Section 63 of the Internal Revenue Code, and taxed
15 under the provisions of this chapter, minus any federal tax credits actually utilized
16 by the taxpayer;
- 17 (9) "Gross income" in the case of taxpayers other than corporations means "gross
18 income" as defined in Section 61 of the Internal Revenue Code;
- 19 (10) "Adjusted gross income" in the case of taxpayers other than corporations means
20 gross income as defined in subsection (9) of this section minus the deductions
21 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
22 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
23 amounts allocable to income subject to taxation under the provisions of this chapter,
24 and except that nothing in this chapter shall be construed to permit the same item to
25 be deducted more than once:
- 26 (a) Exclude income that is exempt from state taxation by the Kentucky
27 Constitution and the Constitution and statutory laws of the United States and

- 1 Kentucky;
- 2 (b) Exclude income from supplemental annuities provided by the Railroad
- 3 Retirement Act of 1937 as amended and which are subject to federal income
- 4 tax by Public Law 89-699;
- 5 (c) Include interest income derived from obligations of sister states and political
- 6 subdivisions thereof;
- 7 (d) Exclude employee pension contributions picked up as provided for in KRS
- 8 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and
- 9 161.540 upon a ruling by the Internal Revenue Service or the federal courts
- 10 that these contributions shall not be included as gross income until such time
- 11 as the contributions are distributed or made available to the employee;
- 12 (e) Exclude Social Security and railroad retirement benefits subject to federal
- 13 income tax;
- 14 (f) Include, for taxable years ending before January 1, 1991, all overpayments of
- 15 federal income tax refunded or credited for taxable years;
- 16 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
- 17 paid for taxable years ending before January 1, 1990;
- 18 (h) Exclude any money received because of a settlement or judgment in a lawsuit
- 19 brought against a manufacturer or distributor of "Agent Orange" for damages
- 20 resulting from exposure to Agent Orange by a member or veteran of the
- 21 Armed Forces of the United States or any dependent of such person who
- 22 served in Vietnam;
- 23 (i) 1. Exclude the applicable amount of total distributions from pension plans,
- 24 annuity contracts, profit-sharing plans, retirement plans, or employee
- 25 savings plans.
- 26 2. The "applicable amount" shall be:
- 27 a. Twenty-five percent (25%), but not more than six thousand two

1 hundred fifty dollars (\$6,250), for taxable years beginning after
2 December 31, 1994, and before January 1, 1996;

3 b. Fifty percent (50%), but not more than twelve thousand five
4 hundred dollars (\$12,500), for taxable years beginning after
5 December 31, 1995, and before January 1, 1997;

6 c. Seventy-five percent (75%), but not more than eighteen thousand
7 seven hundred fifty dollars (\$18,750), for taxable years beginning
8 after December 31, 1996, and before January 1, 1998; and

9 d. One hundred percent (100%), but not more than thirty-five
10 thousand dollars (\$35,000), for taxable years beginning after
11 December 31, 1997.

12 3. As used in this paragraph:

13 a. "Distributions" includes, but is not limited to, any lump-sum
14 distribution from pension or profit-sharing plans qualifying for the
15 income tax averaging provisions of Section 402 of the Internal
16 Revenue Code; any distribution from an individual retirement
17 account as defined in Section 408 of the Internal Revenue Code;
18 and any disability pension distribution;

19 b. "Annuity contract" has the same meaning as set forth in Section
20 1035 of the Internal Revenue Code; and

21 c. "Pension plans, profit-sharing plans, retirement plans, or employee
22 savings plans" means any trust or other entity created or organized
23 under a written retirement plan and forming part of a stock bonus,
24 pension, or profit-sharing plan of a public or private employer for
25 the exclusive benefit of employees or their beneficiaries and
26 includes plans qualified or unqualified under Section 401 of the
27 Internal Revenue Code and individual retirement accounts as

- 1 defined in Section 408 of the Internal Revenue Code;
- 2 (j) 1. a. Exclude the distributive share of a shareholder's net income from
- 3 an S corporation subject to the franchise tax imposed under KRS
- 4 136.505 or the capital stock tax imposed under KRS 136.300; and
- 5 b. Exclude the portion of the distributive share of a shareholder's net
- 6 income from an S corporation related to a qualified subchapter S
- 7 subsidiary subject to the franchise tax imposed under KRS
- 8 136.505 or the capital stock tax imposed under KRS 136.300.
- 9 2. The shareholder's basis of stock held in a S corporation where the S
- 10 corporation or its qualified subchapter S subsidiary is subject to the
- 11 franchise tax imposed under KRS 136.505 or the capital stock tax
- 12 imposed under KRS 136.300 shall be the same as the basis for federal
- 13 income tax purposes;
- 14 (k) Exclude for taxable years beginning after December 31, 1998, to the extent
- 15 not already excluded from gross income, any amounts paid for health
- 16 insurance, or the value of any voucher or similar instrument used to provide
- 17 health insurance, which constitutes medical care coverage for the taxpayer, the
- 18 taxpayer's spouse, and dependents during the taxable year. Any amounts paid
- 19 by the taxpayer for health insurance that are excluded pursuant to this
- 20 paragraph shall not be allowed as a deduction in computing the taxpayer's net
- 21 income under subsection (11) of this section;
- 22 (l) Exclude income received for services performed as a precinct worker for
- 23 election training or for working at election booths in state, county, and local
- 24 primary, regular, or special elections;
- 25 (m) Exclude any amount paid during the taxable year for insurance for long-term
- 26 care as defined in KRS 304.14-600;
- 27 (n) Exclude any capital gains income attributable to property taken by eminent

- 1 domain;
- 2 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
3 owner from the multistate settlement with the tobacco industry, known as the
4 Master Settlement Agreement, signed on November 22, 1998;
- 5 (p) Exclude any amount received from the secondary settlement fund, referred to
6 as "Phase II," established by tobacco companies to compensate tobacco
7 farmers and quota owners for anticipated financial losses caused by the
8 national tobacco settlement;
- 9 (q) Exclude any amount received from funds of the Commodity Credit
10 Corporation for the Tobacco Loss Assistance Program as a result of a
11 reduction in the quantity of tobacco quota allotted; and
- 12 (r) Exclude any amount received as a result of a tobacco quota buydown program
13 that all quota owners and growers are eligible to participate in;
- 14 (11) "Net income" in the case of taxpayers other than corporations means adjusted gross
15 income as defined in subsection (10) of this section, minus the standard deduction
16 allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction
17 allowed by KRS 141.0202, minus any amount paid for vouchers or similar
18 instruments that provide health insurance coverage to employees or their families,
19 and minus all the deductions allowed individuals by Chapter 1 of the Internal
20 Revenue Code as modified by KRS 141.0101 except those listed below, except that
21 deductions shall be limited to amounts allocable to income subject to taxation under
22 the provisions of this chapter and that nothing in this chapter shall be construed to
23 permit the same item to be deducted more than once:
- 24 (a) Any deduction allowed by the Internal Revenue Code for state taxes measured
25 by gross or net income, except that such taxes paid to foreign countries may
26 be deducted;
- 27 (b) Any deduction allowed by the Internal Revenue Code for amounts allowable

- 1 under KRS 140.090(1)(h) in calculating the value of the distributive shares of
 2 the estate of a decedent, unless there is filed with the income return a
 3 statement that such deduction has not been claimed under KRS 140.090(1)(h);
- 4 (c) The deduction for personal exemptions allowed under Section 151 of the
 5 Internal Revenue Code and any other deductions in lieu thereof; and
- 6 (d) Any deduction for amounts paid to any club, organization, or establishment
 7 which has been determined by the courts or an agency established by the
 8 General Assembly and charged with enforcing the civil rights laws of the
 9 Commonwealth, not to afford full and equal membership and full and equal
 10 enjoyment of its goods, services, facilities, privileges, advantages, or
 11 accommodations to any person because of race, color, religion, national
 12 origin, or sex, except nothing shall be construed to deny a deduction for
 13 amounts paid to any religious or denominational club, group, or establishment
 14 or any organization operated solely for charitable or educational purposes
 15 which restricts membership to persons of the same religion or denomination in
 16 order to promote the religious principles for which it is established and
 17 maintained;
- 18 (12) "Gross income," in the case of corporations, means "gross income" as defined in
 19 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
 20 adjusted as follows:
- 21 (a) Exclude income that is exempt from state taxation by the Kentucky
 22 Constitution and the Constitution and statutory laws of the United States;
- 23 (b) Exclude all dividend income received after December 31, 1969;
- 24 (c) Include interest income derived from obligations of sister states and political
 25 subdivisions thereof;
- 26 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
 27 covered by Section 631(c) of the Internal Revenue Code if the corporation

- 1 does not claim any deduction for percentage depletion, or for expenditures
 2 attributable to the making and administering of the contract under which such
 3 disposition occurs or to the preservation of the economic interests retained
 4 under such contract;
- 5 (e) Include in the gross income of lessors income tax payments made by lessees
 6 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
 7 and exclude such payments from the gross income of lessees;
- 8 (f) Include the amount calculated under KRS 141.205;
- 9 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
 10 computing gross income;
- 11 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
 12 Revenue Code);
- 13 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
 14 owner from the multistate settlement with the tobacco industry, known as the
 15 Master Settlement Agreement, signed on November 22, 1998;
- 16 (j) Exclude any amount received from the secondary settlement fund, referred to
 17 as "Phase II," established by tobacco companies to compensate tobacco
 18 farmers and quota owners for anticipated financial losses caused by the
 19 national tobacco settlement;
- 20 (k) Exclude any amount received from funds of the Commodity Credit
 21 Corporation for the Tobacco Loss Assistance Program as a result of a
 22 reduction in the quantity of tobacco quota allotted; and
- 23 (l) Exclude any amount received as a result of a tobacco quota buydown program
 24 that all quota owners and growers are eligible to participate in;
- 25 (13) "Net income," in the case of corporations, means "gross income" as defined in
 26 subsection (12) of this section minus the deduction allowed by KRS 141.0202,
 27 minus any amount paid for vouchers or similar instruments that provide health

1 insurance coverage to employees or their families, and minus all the deductions
2 from gross income allowed corporations by Chapter 1 of the Internal Revenue Code
3 and as modified by KRS 141.0101, except the following:

- 4 (a) Any deduction for a state tax which is computed, in whole or in part, by
5 reference to gross or net income and which is paid or accrued to any state of
6 the United States, the District of Columbia, the Commonwealth of Puerto
7 Rico, any territory or possession of the United States, or to any foreign
8 country or political subdivision thereof;
- 9 (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal
10 Revenue Code;
- 11 (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored
12 in computing net income;
- 13 (d) Any deduction directly or indirectly allocable to income which is either
14 exempt from taxation or otherwise not taxed under the provisions of this
15 chapter, and nothing in this chapter shall be construed to permit the same item
16 to be deducted more than once;
- 17 (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the
18 Internal Revenue Code); and
- 19 (f) Any deduction for amounts paid to any club, organization, or establishment
20 which has been determined by the courts or an agency established by the
21 General Assembly and charged with enforcing the civil rights laws of the
22 Commonwealth, not to afford full and equal membership and full and equal
23 enjoyment of its goods, services, facilities, privileges, advantages, or
24 accommodations to any person because of race, color, religion, national
25 origin, or sex, except nothing shall be construed to deny a deduction for
26 amounts paid to any religious or denominational club, group, or establishment
27 or any organization operated solely for charitable or educational purposes

- 1 which restricts membership to persons of the same religion or denomination in
2 order to promote the religious principles for which it is established and
3 maintained;
- 4 (14) (a) "Taxable net income," in the case of corporations having property or payroll
5 only in this state, means "net income" as defined in subsection (13) of this
6 section;
- 7 (b) "Taxable net income," in the case of corporations having property or payroll
8 both within and without this state means "net income" as defined in
9 subsection (13) of this section and as allocated and apportioned under KRS
10 141.120;
- 11 (c) "Property" means either real property or tangible personal property which is
12 either owned or leased. "Payroll" means compensation paid to one (1) or more
13 individuals, as described in KRS 141.120(8)(b). Property and payroll are
14 deemed to be entirely within this state if all other states are prohibited by
15 Public Law 86-272, as it existed on December 31, 1975, from enforcing
16 income tax jurisdiction;
- 17 (d) "Taxable net income" in the case of homeowners' associations as defined in
18 Section 528(c) of the Internal Revenue Code, means "taxable income" as
19 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
20 provisions of subsection (3) of this section, the Internal Revenue Code
21 sections referred to in this paragraph shall be those code sections in effect for
22 the applicable tax year; and
- 23 (e) "Taxable net income" in the case of a corporation that meets the requirements
24 established under Section 856 of the Internal Revenue Code to be a real estate
25 investment trust, means "real estate investment trust taxable income" as
26 defined in Section 857(b)(2) of the Internal Revenue Code;
- 27 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue

- 1 Code;
- 2 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar
3 year, upon the basis of which net income is computed, and in the case of a return
4 made for a fractional part of a year under the provisions of this chapter or under
5 regulations prescribed by the secretary, "taxable year" means the period for which
6 such return is made;
- 7 (17) "Resident" means an individual domiciled within this state or an individual who is
8 not domiciled in this state, but maintains a place of abode in this state and spends in
9 the aggregate more than one hundred eighty-three (183) days of the taxable year in
10 this state;
- 11 (18) "Nonresident" means any individual not a resident of this state;
- 12 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
13 Revenue Code;
- 14 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
15 Revenue Code;
- 16 (21) "Number of withholding exemptions claimed" means the number of withholding
17 exemptions claimed in a withholding exemption certificate in effect under KRS
18 141.325, except that if no such certificate is in effect, the number of withholding
19 exemptions claimed shall be considered to be zero;
- 20 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
21 Code and includes other income subject to withholding as provided in Section
22 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 23 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
24 Internal Revenue Code;
- 25 (24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the
26 Internal Revenue Code;
- 27 (25) "S corporations" means "S corporations" as defined in Section 1361(a) of the

1 Internal Revenue Code. Stockholders of a corporation qualifying as an "S
2 corporation" under this chapter may elect to treat such qualification as an initial
3 qualification under Subchapter S of the Internal Revenue Code Sections.

4 Section 472. KRS 141.023 is amended to read as follows:

5 To facilitate tax computation and tax return preparation, the Department of Revenue
6 ~~Cabinet~~ may develop optional tax tables and specify the classes of taxpayers eligible to
7 utilize the tables in the preparation of their returns.

8 Section 473. KRS 141.0405 is amended to read as follows:

9 (1) There shall be allowed a nonrefundable credit against taxes imposed by the
10 Commonwealth on any taxpayer that:

- 11 (a) 1. Is an electric power company as defined in KRS Chapter 136; or
- 12 2. Is an entity that owns or operates a coal-fired electric generation plant;
- 13 (b) Remits tax to the Commonwealth under KRS 136.070, 136.120, 141.020, or
- 14 141.040; and
- 15 (c) Purchases coal subject to the tax imposed under KRS 143.020 that is used by
- 16 the taxpayer, or by a parent company if the taxpayer is a wholly owned
- 17 subsidiary, for the purpose of generating electricity.

18 (2) The amount of the allowable credit shall be two dollars (\$2) per each incentive ton
19 of coal purchased that is subject to tax under KRS 143.020 and that is used to
20 generate electric power.

21 (3) Incentive tons are calculated as the tons of coal purchased in the current year for
22 which coal severance tax was paid minus the tons of coal purchased and used
23 during the base year.

24 (4) The base year amount shall be equal to:

- 25 (a) For entities existing on July 14, 2000, that meet the eligibility requirements
- 26 imposed under subsection (1) of this section, the tons of coal purchased and
- 27 used to generate electricity during the twelve (12) calendar months ending in

- 1 December 31, 1999, that were subject to the tax imposed by KRS 143.020; or
- 2 (b) For entities that come into existence after July 14, 2000, that meet the
- 3 eligibility requirements imposed under subsection (1) of this section, the base
- 4 year amount shall be equal to zero (0). However, no company qualifying for
- 5 the credit as of July 14, 2000, with a base year calculation as provided under
- 6 subsection (4)(a) of this section may create an affiliate, subsidiary, or
- 7 corporation that would qualify for a base year of zero (0).
- 8 (5) On or before March 15 of each year, a company eligible for the credit provided
- 9 under subsection (2) of this section shall file a coal incentive credit claim on forms
- 10 prescribed by the Department of Revenue~~[Cabinet]~~. At the time of filing for the
- 11 credit, the taxpayer shall submit verification of the tons of coal purchased in the
- 12 base year and the tons of coal purchased in the year for which the credit is being
- 13 claimed. The Department of Revenue~~[Cabinet]~~ shall determine the amount of the
- 14 eligible credit and issue a credit certificate to the taxpayer.
- 15 (6) The taxpayer shall be eligible to apply, subject to the conditions imposed under
- 16 subsection (7) of this section, the amount identified on the credit certificate issued
- 17 by the Department of Revenue~~[Cabinet]~~ under subsection (5) of this section,
- 18 against the taxpayer's liability for the taxes, in consecutive order as follows:
- 19 (a) KRS 141.040;
- 20 (b) KRS 141.020;
- 21 (c) KRS 136.070; and
- 22 (d) KRS 136.120.
- 23 (7) The credit shall meet the entirety of the taxpayer's liability under the first tax listed
- 24 in consecutive order under subsection (6) of this section before applying the
- 25 remaining credit to the next tax listed in consecutive order. The taxpayer's total
- 26 liability under each preceding tax must be fully met before the remaining credit can
- 27 be applied to the subsequent tax listed in consecutive order.

1 (8) The taxpayer shall maintain records required in subsection (5) of this section for a
2 period of five (5) years.

3 (9) Acceptable verification of coal purchased during the base year shall include
4 invoices that indicate the tons of coal purchased from a Kentucky supplier of coal
5 and proof of remittance for that purchase.

6 (10) The Department of Revenue~~[Cabinet]~~ shall develop the forms required under
7 subsection (5) of this section, specifying the procedure for claiming the credit, and
8 applying the credit against the taxpayer's liability in the order provided under
9 subsections (6) and (7) of this section.

10 Section 474. KRS 141.041 is amended to read as follows:

11 (1) There shall be allowed a credit against the tax imposed on any corporation subject
12 to taxation under KRS 141.040 and which, on or after January 1, 1984, installs,
13 modifies, and utilizes facilities located in Kentucky for generating steam or hot
14 water for space-heating or materials processing or for providing direct heat for
15 industrial processes in the following ways:

16 (a) Replacement of an existing heat-generating facility not capable of using coal
17 as a fuel with one in which coal can be used;

18 (b) Erection of a heat-generating facility additional to any existing heat-generating
19 facility or facilities and capable of using coal as a fuel;

20 (c) Refurbishment for coal utilization of heat-generating facilities which were at
21 one time capable of using coal but which had been altered to allow use of
22 other fuels;

23 (d) Alteration of an existing heat-generating facility not capable of utilizing coal
24 in such ways as to allow the use of coal;

25 (e) Substitution of coal for other fuels in any heat-generating facility which on
26 January 1, 1984, was in existence and capable of utilizing coal and other fuels.

27 Substitution means the increased heat input in BTU from coal matched by

1 equal decreases of heat input in equivalent measures to BTU from other fuels,
 2 based upon relative fuel usage in the calendar year preceding the year in which
 3 the substitution occurred.

4 (2) The amount of the allowable credit shall be equal to four and one-half percent
 5 (4.5%) of the purchase price of the coal subject to taxation under KRS Chapter 143
 6 consumed or substituted in each eligible heating facility as described in subsection
 7 (1) of this section, minus any transporting cost included in the purchase price.

8 (3) The credit shall be allowed for ten (10) years consecutive from the date of the initial
 9 installation, modification, or utilization of any heat-generating facility installed or
 10 modified on and after January 1, 1984, as defined in subsection (1)(a), (b), (c), and
 11 (d) of this section or ten (10) years consecutive from the filing of a fuel-switching
 12 credit claim in subsection (1)(e) of this section.

13 (4) The credit allowable under this section shall be applied against the taxpayer's tax
 14 liability as provided in KRS 141.0205, and no part of the credit shall be applicable
 15 to the tax imposed by KRS 141.040 for any other taxable year.

16 (5) A corporation claiming the credit under this section must submit proof of the
 17 installation, modification, utilization or substitution as required by regulations
 18 issued by the Department of Revenue~~[Cabinet]~~ prior to the claiming of such credit.

19 Section 475. KRS 141.042 is amended to read as follows:

20 (1) For all taxable years beginning on or after July 1, 1966, every corporation subject to
 21 taxation under KRS 141.040 shall make a declaration of estimated tax if the tax
 22 imposed by KRS 141.040 for the taxable year can reasonably be expected to exceed
 23 five thousand dollars (\$5,000).

24 (2) The declaration required under subsection (1) shall contain the following
 25 information:

26 (a) The amount which is estimated as the amount of tax under KRS 141.040 for
 27 the taxable year;

- 1 (b) The excess of the amount estimated under paragraph (a) over five thousand
2 dollars (\$5,000), which excess for purposes of this section and KRS 141.044
3 and 141.205 shall be considered the estimated tax for the taxable year;
- 4 (c) Such other information as the department~~[cabinet]~~ by forms or regulations
5 may prescribe.
- 6 (3) The declaration required under subsection (1) shall be filed with the
7 department~~[cabinet]~~ on or before June 15 of the taxable year, except that if the
8 requirements of subsection (1) are first met:
- 9 (a) After June 1 and before September 2 of the taxable year, the declaration shall
10 be filed on or before September 15 of the taxable year;
- 11 (b) After September 1 of the taxable year, the declaration shall be filed on or
12 before December 15 of the taxable year.
- 13 (4) A corporation may make amendments of a declaration filed during the taxable year
14 in accordance with regulations prescribed by the department~~[cabinet]~~. An
15 amendment of a declaration may be filed in any interval between the installment
16 dates prescribed for that taxable year but only one (1) amendment may be filed in
17 each such interval. If any amendment of a declaration is filed, the remaining
18 installments, if any, shall be ratably increased or decreased as the case may be, to
19 reflect the increase or decrease of the estimated tax by reason of such amendment. If
20 any amendment is made after September 15 of the taxable year, any increase in the
21 estimated tax by reason thereof shall be paid in full at the time of making such
22 amendment.
- 23 (5) A corporation with a taxable year of less than twelve (12) months shall make a
24 declaration in accordance with regulations prescribed by the department~~[cabinet]~~.
- 25 (6) The department~~[cabinet]~~ may grant a reasonable extension of time for filing
26 declarations and paying the estimated tax under such rules and regulations as it may
27 prescribe. If any extension operates to postpone a payment of estimated tax, interest

1 at the rate of eight percent (8%) per annum shall be collected.

2 Section 476. KRS 141.050 is amended to read as follows:

3 (1) Except to the extent required by differences between this chapter and its application
4 and the federal income tax law and its application, the administrative and judicial
5 interpretations of the federal income tax law, computations of gross income and
6 deductions therefrom, accounting methods, and accounting procedures, for purposes
7 of this chapter shall be as nearly as practicable identical with those required for
8 federal income tax purposes. Changes to federal income tax law made after the
9 Internal Revenue Code reference date contained in KRS 141.010(3) shall not apply
10 for purposes of this chapter unless adopted by the General Assembly.

11 (2) Every person subject to the provisions of this chapter shall keep such records,
12 render under oath such statements, make such returns, and comply with such rules
13 and regulations as the department~~{cabinet}~~ from time to time may prescribe.
14 Whenever the department~~{cabinet}~~ judges it necessary, it may require such person,
15 by notice served upon him, to make a return, render under oath such statements, or
16 keep such records, as the department~~{cabinet}~~ deems sufficient to show whether or
17 not such person is liable for tax, and the extent of such liability.

18 (3) The commissioner~~{secretary}~~ or his authorized agent or representative, for the
19 purpose of ascertaining the correctness of any return or for the purposes of making
20 an estimate of the taxable income of any taxpayers, may require the attendance of
21 the taxpayer or of any other person having knowledge in the premises.

22 (4) The department~~{cabinet}~~ shall prescribe the forms and reports necessary to the
23 proper administration of any and all provisions of this chapter, and shall promulgate
24 such rules and regulations necessary to effectively carry out the provisions of this
25 chapter.

26 Section 477. KRS 141.068 is amended to read as follows:

27 (1) As used in this section, unless the context requires otherwise:

- 1 (a) "Authority" means the Kentucky Economic Development Finance Authority
2 as created pursuant to KRS 154.20-010;
- 3 (b) "Investor" has the same meaning as set forth in KRS 154.20-254;
- 4 (c) "Investment fund" has the same meaning as set forth in KRS 154.20-254;
- 5 (d) "Investment fund manager" has the same meaning as set forth in KRS 154.20-
6 254; and
- 7 (e) "Tax credit" means the credits provided for in KRS 154.20-258.
- 8 (2) (a) An investor which is an individual or a corporation shall be entitled to the
9 credit certified by the authority under KRS 154.20-258 against the income tax
10 due computed as provided by KRS 141.020 or 141.040, respectively.
- 11 (b) The amount of the certified tax credit that may be claimed in any tax year of
12 the investor shall be determined in accordance with the provisions of KRS
13 154.20-258.
- 14 (3) (a) In the case of an investor that is an S-corporation, partnership, limited
15 partnership, limited liability company, or limited liability partnership, the
16 amount of the tax credit certified by the authority under KRS 154.20-258 shall
17 be apportioned among the shareholders, partners, or members thereof, as
18 applicable, at the same ratio as the shareholders', partners', or members'
19 distributive shares of income are determined for the tax year during which the
20 amount of the credit is certified by the authority.
- 21 (b) The amount of the tax credit apportioned to each shareholder, partner, or
22 member that may be claimed in any tax year of the shareholder, partner, or
23 member shall be determined in accordance with the provisions of KRS
24 154.20-258.
- 25 (4) (a) In the case of an investor that is a trust, the amount of the tax credit certified
26 by the authority under KRS 154.20-258 shall be apportioned to the trust and
27 the beneficiaries on the basis of the income of the trust allocable to each for

1 the tax year during which the tax credit is certified by the authority.

2 (b) The amount of tax credit apportioned to each trust or beneficiary that may be
3 claimed in any tax year of the trust or beneficiary shall be determined in
4 accordance with the provisions of KRS 154.20-258.

5 (5) The Department of Revenue~~[Cabinet]~~ shall promulgate administrative regulations
6 under KRS Chapter 13A adopting forms and procedures for the reporting and
7 administration of credits authorized by KRS 154.20-258.

8 Section 478. KRS 141.070 is amended to read as follows:

9 (1) Whenever an individual who is a resident of this state has become liable for income
10 tax to another state upon all or any part of his net income for the taxable year,
11 derived from sources without this state and subject to taxation under this chapter,
12 the amount of income tax payable by him under this chapter shall be credited on his
13 return with the income tax so paid by him to the other state, upon his producing to
14 the proper assessing officer satisfactory evidence of the fact of such payment,
15 except that application of such credits shall not operate to reduce the tax payable
16 under this chapter to an amount less than would have been payable were the income
17 from the other state ignored.

18 (2) An individual who is not a resident of this state shall not be liable for any income
19 tax under KRS 141.020(4) if the laws of the state of which such individual was a
20 resident at the time such income was earned in this state contained a reciprocal
21 provision under which nonresidents were exempted from gross or net income taxes
22 to such state, if the state of residence of such nonresident individual allowed a
23 similar exemption to resident individuals of this state. The exemption authorized by
24 this subsection shall in no manner preclude the Department of Revenue~~[Cabinet]~~
25 from requiring any information reports pursuant to KRS 141.150(2).

26 Section 479. KRS 141.072 is amended to read as follows:

27 The designation for a political party shall appear on the face of the individual income tax

1 return. Fifty cents (\$0.50) of any designation pursuant to KRS 141.071 shall be reserved
 2 for remittance to the appropriate official of the local governing authority of the designated
 3 political party within the taxpayer's resident county. The remainder of the designation
 4 shall be reserved for remittance to the appropriate official of the state governing authority
 5 of the designated political party. The commissioner of the Department of
 6 Revenue~~secretary of revenue~~ shall annually certify by December 1 all such designated
 7 amounts to be paid by the State Treasurer, and the Treasurer shall annually remit by the
 8 following January 1 such funds to the appropriate official of the state and local governing
 9 authorities of the designated political party.

10 Section 480. KRS 141.073 is amended to read as follows:

11 The Department of Revenue~~Cabinet~~ shall promulgate such rules and regulations as
 12 may be necessary to effectively administer the provisions of KRS 141.071 and 141.072.

13 Section 481. KRS 141.120 is amended to read as follows:

14 (1) As used in this section, unless the context requires otherwise:

15 (a) "Business income" means income arising from transactions and activity in the
 16 regular course of a trade or business of the corporation and includes income
 17 from tangible and intangible property if the acquisition, management, or
 18 disposition of the property constitutes integral parts of the corporation's
 19 regular trade or business operations;

20 (b) "Commercial domicile" means the principal place from which the trade or
 21 business of the corporation is managed;

22 (c) "Compensation" means wages, salaries, commissions, and any other form of
 23 remuneration paid or payable to employees for personal services;

24 (d) "Financial organization" means any bank, trust company, savings bank,
 25 industrial bank, land bank, safe deposit company, private banker, savings and
 26 loan association, credit union, cooperative bank, investment company, or any
 27 type of insurance company;

- 1 (e) "Nonbusiness income" means all income other than business income;
- 2 (f) "Public service company" means any business entity subject to taxation under
3 KRS 136.120;
- 4 (g) "Sales" means all gross receipts of the corporation not allocated under
5 subsections (3) through (7) of this section;
- 6 (h) "State" means any state of the United States, the District of Columbia, the
7 Commonwealth of Puerto Rico, any territory or possession of the United
8 States, and any foreign country or political subdivision thereof.
- 9 (2) Any corporation which is required by KRS 141.010(14)(b) to allocate and apportion
10 its net income shall allocate and apportion its net income as provided in this section.
- 11 (3) Rents and royalties from real, intangible or tangible personal property, capital gains
12 and losses, interest, or patent or copyright royalties, to the extent that they constitute
13 nonbusiness income, shall be allocated as provided in subsections (4) through (7) of
14 this section.
- 15 (4) (a) Net rents and royalties from real property located in this state are allocable to
16 this state.
- 17 (b) Net rents and royalties from tangible personal property are allocable to this
18 state if and to the extent that the property is utilized in this state; or in their
19 entirety if the corporation's commercial domicile is in this state and the
20 corporation is not organized under the laws of or taxable in the state in which
21 the property is utilized.
- 22 (c) The extent of utilization of tangible personal property in a state is determined
23 by multiplying the rents and royalties by a fraction, the numerator of which is
24 the number of days of physical location of the property in the state during the
25 rental or royalty period in the taxable year and the denominator of which is the
26 number of days of physical location of the property everywhere during all
27 rental or royalty periods in the taxable year. If the physical location of the

1 property during the rental or royalty period is unknown or unascertainable by
 2 the corporation, the tangible personalty is utilized in the state in which the
 3 property was located at the time the rental or royalty payer obtained
 4 possession.

5 (d) Net rents and royalties from intangible personal property located in this state
 6 are allocable to this state. For purposes of this section, royalties from property
 7 leased in Kentucky shall be considered as royalties from intangible personal
 8 property.

9 (5) (a) Capital gains and losses from sales or other dispositions of real property
 10 located in this state are allocable to this state.

11 (b) Capital gains and losses from sales or other dispositions of tangible personal
 12 property are allocable to this state if the property had a situs in this state at the
 13 time of the sale, or the corporation's commercial domicile is in this state and
 14 the corporation is not taxable in the state in which the property had a situs.

15 (c) Capital gains and losses from sales or other dispositions of intangible personal
 16 property are allocable to this state if the corporation's commercial domicile is
 17 in this state.

18 (6) Interest is allocable to this state if the corporation's commercial domicile is in this
 19 state.

20 (7) (a) Patent and copyright royalties are allocable to this state if and to the extent
 21 that the patent or copyright is utilized by the payer in this state; or if and to the
 22 extent that the patent or copyright is utilized by the payer in a state in which
 23 the corporation is not taxable and the corporation's commercial domicile is in
 24 this state.

25 (b) A patent is utilized in a state to the extent that it is employed in production,
 26 fabrication, manufacturing, or other processing in the state or to the extent that
 27 a patented product is produced in the state. If the basis of receipts from patent

royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the corporation's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the corporation's commercial domicile is located.

(8) Except as provided for in subsection (9) of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3); provided, however, that effective with taxable years beginning after July 31, 1985, in lieu of the equally weighted three (3) factor apportionment fraction based on property, payroll, and sales, an apportionment fraction composed of a sales factor representing fifty percent (50%) of the fraction, a property factor representing twenty-five percent (25%) of the fraction, and a payroll factor representing twenty-five percent (25%) of the fraction shall be used.

(a) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the tax period; provided, however, that property which has been certified as a pollution control facility as defined in KRS 224.01-300 shall be excluded from the property factor.

1. Property owned is valued at its original cost. If the original cost of any property is not determinable or is nominal or zero (0) the property shall be valued by the department~~[cabinet]~~ pursuant to administrative

1 regulations promulgated by the department~~[cabinet]~~. Property rented is
 2 valued at eight (8) times the net annual rental rate. Net annual rental rate
 3 is the annual rental rate paid by the corporation less any annual rental
 4 rate received by the corporation from subrentals, provided that the rental
 5 and subrentals are reasonable. If the department~~[cabinet]~~ determines
 6 that the annual rental or subrental rate is unreasonable, or if a nominal or
 7 zero (0) rate is charged, the department~~[cabinet]~~ may determine and
 8 apply the rental rate as will reasonably reflect the value of the property
 9 rented by the corporation.

10 2. The average value of property shall be determined by averaging the
 11 values at the beginning and ending of the tax period but the
 12 department~~[cabinet]~~ may require the averaging of monthly values
 13 during the tax period if reasonably required to reflect properly the
 14 average value of the property.

15 (b) The payroll factor is a fraction, the numerator of which is the total amount
 16 paid or payable in this state during the tax period by the corporation for
 17 compensation, and the denominator of which is the total compensation paid or
 18 payable by the corporation everywhere during the tax period. Compensation is
 19 paid or payable in this state if:

- 20 1. The individual's service is performed entirely within the state;
- 21 2. The individual's service is performed both within and without the state,
 22 but the service performed without the state is incidental to the
 23 individual's service within the state; or
- 24 3. Some of the service is performed in the state and the base of operations
 25 or, if there is no base of operations, the place from which the service is
 26 directed or controlled is in the state, or the base of operations or the
 27 place from which the service is directed or controlled is not in any state

- 1 in which some part of the service is performed, but the individual's
2 residence is in this state.
- 3 (c) 1. The sales factor is a fraction, the numerator of which is the total sales of
4 the corporation in this state during the tax period, and the denominator
5 of which is the total sales of the corporation everywhere during the tax
6 period.
- 7 2. Sales of tangible personal property are in this state if:
- 8 a. The property is delivered or shipped to a purchaser, other than the
9 United States government, or to the designee of the purchaser
10 within this state regardless of the f.o.b. point or other conditions of
11 the sale; or
- 12 b. The property is shipped from an office, store, warehouse, factory,
13 or other place of storage in this state and the purchaser is the
14 United States government.
- 15 3. Sales, other than sales of tangible personal property, are in this state if
16 the income-producing activity is performed in this state; or the income-
17 producing activity is performed both in and outside this state and a
18 greater proportion of the income-producing activity is performed in this
19 state than in any other state, based on costs of performance.
- 20 (9) (a) If the allocation and apportionment provisions of this section do not fairly
21 represent the extent of the corporation's business activity in this state, the
22 corporation may petition for or the department~~[cabinet]~~ may require, in
23 respect to all or any part of the corporation's business activity, if reasonable:
- 24 1. Separate accounting;
- 25 2. The exclusion of any one (1) or more of the factors;
- 26 3. The inclusion of one (1) or more additional factors which will fairly
27 represent the corporation's business activity in this state; or

1 4. The employment of any other method to effectuate an equitable
2 allocation and apportionment of income.

3 (b) A corporation may elect the allocation and apportionment methods for the
4 corporation's business income provided for in subparagraphs 1. and 2. of this
5 paragraph. The election, if made, shall be irrevocable for a period of five
6 years.

7 1. All business income derived directly or indirectly from the sale of
8 management, distribution, or administration services to or on behalf of
9 regulated investment companies, as defined under the Internal Revenue
10 Code of 1986, as amended, including trustees, and sponsors or
11 participants of employee benefit plans which have accounts in a
12 regulated investment company, shall be apportioned to this state only to
13 the extent that shareholders of the investment company are domiciled in
14 this state as follows:

15 a. Total business income shall be multiplied by a fraction, the
16 numerator of which shall be Kentucky receipts from the services
17 for the tax period and the denominator of which shall be the total
18 receipts everywhere from the services for the tax period.

19 b. For purposes of subdivision a. of this subparagraph, Kentucky
20 receipts shall be determined by multiplying total receipts for the
21 tax period from each separate investment company for which the
22 services are performed by a fraction. The numerator of the fraction
23 shall be the average of the number of shares owned by the
24 investment company's shareholders domiciled in this state at the
25 beginning of and at the end of the investment company's taxable
26 year, and the denominator of the fraction shall be the average of
27 the number of the shares owned by the investment company